

# **EXHIBIT 9**

Case No. 14-CV-704-GKF-JFJ

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

and

OSAGE MINERALS COUNCIL,

Intervenor-Plaintiff,

vs

No. 14-CV-704-GKF-JFJ

OSAGE WIND, LLC,  
ENEL KANSAS, LLC;  
and ENEL GREEN POWER  
NORTH AMERICA, INC.,

Defendants.

VIDEOTAPED DEPOSITION OF STEVEN HAZEL  
Taken on Behalf of the Defendants  
On April 29, 2021, beginning at 10:05 a.m.  
All Parties Appearing Via Webconference

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Appearances Continued on Next Page

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Also present: Christina Watson, Michelle Hammock,  
John Pfahl, Kimberlee Centera

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STIPULATIONS

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys, that the deposition of STEVEN HAZEL may be taken pursuant to notice and in accordance with the Federal Rules of Civil Procedure on April 29, 2021, before Mary K. Beckham, CSR RPR.

1 THE VIDEOGRAPHER: This is the videotaped  
2 deposition of Steven Hazel, taken in the matter of  
3 the United States of America and Osage Minerals  
4 Council versus Osage Wind, LLC, et al., filed in the  
5 United States District Court for the Northern  
6 District of Oklahoma, case number 14-CV-704-GKF-JFJ.  
7 This deposition is being held on April 29th, 2021,  
8 and we are on the record at 10:05 a.m.

9 Will counsel please state their  
10 appearances for the record?

11 MR. RAY: Ryan Ray, and with me is  
12 co-counsel, Lynn Slade, Sarah Stevenson and Dominic  
13 Martinez. We all represent all defendants, and also  
14 observing the proceedings are John Pfahl and  
15 Kimberlee Centera that are testifying experts for  
16 the defendants. That's all for the defendant group.

17 MR. ASHWORTH: Stuart Ashworth and Cathryn  
18 McClanahan on behalf of the plaintiff, United  
19 States. We also have Charles Babst, who is attorney  
20 for the Department of the Interior, Office of the  
21 Solicitor, as well as Christina Watson and Michelle  
22 Hammock, who are paralegals with the U.S. Attorney's  
23 Office.

24 MS. NAGLE: Mary Kathryn Nagle with  
25 Pipestem & Nagle. We represent the plaintiff --

1 intervenor plaintiff, the Osage Minerals Council,  
2 and I also have with me here today a colleague from  
3 my office, Shoney Blake.

4 THE VIDEOGRAPHER: All right.

5 MR. RAY: Will the court reporter please  
6 swear the witness.

7 WHEREUPON,

8 STEVEN HAZEL,  
9 after having been first duly sworn, deposes and  
10 says in reply to the questions propounded as  
11 follows, to-wit:

12 DIRECT EXAMINATION

13 BY MR. RAY:

14 Q All right, Mr. Hazel. You've been deposed  
15 many, many times, correct?

16 A Yes.

17 Q And have you been deposed before by remote  
18 means, like we are conducting this deposition today?

19 A Yes.

20 Q All right. And do you have any -- do you  
21 have a cellular telephone with you?

22 A Somewhere. I don't know exactly where it  
23 is, but it is somewhere in my office, yes.

24 Q Okay. But can you commit to us that you  
25 won't use it to communicate with anyone while we are

1 on the record?

2 A Sounds good.

3 Q All right. And do you have any other  
4 electronic devices there with you in the room, sir?

5 A I mean, probably. I have other computers,  
6 I have a tablet, things like that, but none of them  
7 are out or are on.

8 Q Okay. And will you likewise agree that  
9 while we are on the record you won't use any of  
10 those devices to communicate with any other person?

11 A Yes.

12 Q All right. Is there anyone else with you  
13 in the room, sir, right now?

14 A No.

15 Q Where are you physically located as we sit  
16 here right now?

17 A I'm in Centennial, Colorado.

18 Q All right. Is that -- are you in an  
19 office, or are you at your home or somewhere else?

20 A At my home.

21 Q Okay. Do you have any documents there  
22 with you in the room related to this case?

23 A I mean, there may be something on my  
24 shelf, but because of the pandemic, most things  
25 didn't get printed these days, so I don't believe



1 there's anything, if anything at all.

2 Q Okay. But if there is, you agree that you  
3 can't consult those materials unless we're  
4 specifically talking about it, and you let us know  
5 that; is that fair?

6 A That's fine.

7 Q All right. Sir, now, as I understand it,  
8 you are a -- you're designated to give some opinion  
9 testimony on behalf of the United States of America  
10 in this case; is that correct?

11 A Sounds right.

12 Q All right. Now, tell us what -- what  
13 matters you were retained to opine about, to your  
14 understanding.

15 A I don't know what you mean by what  
16 matters. I don't understand what you mean by that.

17 Q Well, what is the subject matter of your  
18 testimony? Do you understand that?

19 A Well, I think broadly it's damages.

20 Q And damages on what claims? Do you have  
21 an understanding of that, or is it all claims?

22 A That would be a legal conclusion. I can't  
23 make that conclusion.

24 Q So you just don't have any understanding  
25 of what claim or claims you may be offering damages

1 testimony regarding, true?

2 A No, I wouldn't agree with that.

3 Q All right. Well, tell us what claims you  
4 believe you are offering damages testimony  
5 regarding.

6 A Again, I'm not going to establish the  
7 damages, the remedies specific to the claims. I  
8 could pull up the complaint and look at the various  
9 different claims that are being offered in this  
10 case, if you would like.

11 Q Have you done that prior to today?

12 A Sure.

13 Q And do you have any understanding, as we  
14 sit here right now, of what those claims are?

15 A Off the top of my head, no.

16 Q No recollection whatsoever?

17 A Again, I haven't looked at the complaint  
18 for a couple of days, so I don't remember any  
19 specific claims that are on there.

20 Q All right, sir. Tell us what you did to  
21 prepare for this deposition today.

22 A Well, broadly, I had a couple of calls  
23 with the U.S. District Attorney's Office. I had  
24 reviewed all of my report, as well as other reports  
25 offered in this case. I looked at the various

1 different documentation I have in my files to kind  
2 of recollect all the information I had previously.

3 Q All right. When you said other reports,  
4 what other reports did you review?

5 A So you've already talked about Centera and  
6 Pfahl, that you'd said were on the call, so it would  
7 be their reports. I think it's pronounced Freas,  
8 F-R-E-I-S (sic), I believe, I've looked at his  
9 report. I can't think of any other reports off the  
10 top of my head.

11 Q All right. So you reviewed the reports of  
12 Ms. Centera, Mr. Pfahl and Mr. Freas; true?

13 A Right.

14 Q All right. Had you reviewed any of those  
15 reports prior to the last couple of days?

16 A Have you -- of course.

17 Q Which ones of them had you reviewed prior  
18 to the last couple of days; all of them?

19 A All of them.

20 Q When did you first review those reports?  
21 Let's start with --

22 A I don't remember.

23 Q -- Mr. Freas. When did you first -- do  
24 you recall when you first reviewed Mr. Freeze's  
25 report?

1           A     I don't remember. I would have to look at  
2 my time records.

3           Q     Okay. Would that be reflected in your  
4 time records?

5           A     Should be.

6           Q     And did you review all these reports at  
7 the same time for the first time or different times?

8           A     I mean, I have reviewed all three reports  
9 at one time in one sitting, if that's what you're  
10 asking, but if you're talking about originally, I  
11 just don't remember.

12          Q     Was there a specific occasion that caused  
13 you to review all three reports?

14          A     I'm sorry, you cut out on me a little bit  
15 during the question. Can you say that again?

16          Q     Was there a specific occasion that caused  
17 you to review all those reports in one setting?

18          A     I don't know what you mean by that.  
19 You'll have to rephrase that. It doesn't make any  
20 sense to me.

21          Q     Well, was there a specific reason that you  
22 reviewed all the reports in one setting?

23          A     Well, I've already given you an example of  
24 that. I said, we did a depo preparation. I looked  
25 at all the different reports.

1 Q Right. And I said -- I think you said,  
2 sir, that you looked at them prior to that in one  
3 setting. Is that true, or was the first time you  
4 looked at them in one setting in preparation for the  
5 deposition?

6 A First of all, I don't think I said that,  
7 but second of all, I don't remember whether I looked  
8 at all the reports in one setting previously.

9 Q Okay. So the only time you can recall  
10 looking at all of them in one setting is in the last  
11 couple of days; is that correct?

12 A Sure.

13 (Exhibit 17 marked for identification.)

14 Q (By Mr. Ray) All right. Let's pull up,  
15 if we could, Exhibit Number 17. This should be  
16 shared for you, sir, on the screen. Hopefully you  
17 can see it. Let us know if you have any problems.

18 A It's a little small, but I can see it.  
19 I'm actually going to put my larger screen on, if  
20 that's okay with you.

21 Q Yes, that's fine. Please do that, sir.

22 A I'll be looking up, so that's what I'm  
23 looking at when I'm looking up. Okay. Go ahead.

24 Q All right. Exhibit 17 is -- it's actually  
25 an excerpt from your report. Does -- other than the

1 three expert reports that you mentioned, does this  
2 document list all the other documents you have  
3 relied on in forming the opinions you have in this  
4 case?

5 A I would doubt it, because I'm pretty sure  
6 we've gotten other information since the date of our  
7 report, but I'm trying to think of an example. I  
8 can't think of one off the top of my head.

9 Q But you do, in fact, believe that you have  
10 received other materials since the date of your  
11 report that you are relying on in the case; is that  
12 true?

13 A I can't think of what those documents are,  
14 so it's hard for me to answer that question, so I  
15 don't know.

16 Q Do you know one way or another, whether  
17 you've received other documents?

18 A I don't know definitively one way or the  
19 other.

20 Q Is there any kind of objective source you  
21 would have that you could consult and answer that  
22 question, like a list?

23 A Yes. We have -- we keep an index of the  
24 documents that we have.

25 Q And do you update that every time you

1 receive a new document?

2 A I don't update it, but it's updated by our  
3 group, yes.

4 Q And that's someone at FTI; is that  
5 correct?

6 A Correct.

7 Q All right. And tell us where -- how did  
8 you receive the documents that are set forth on  
9 Appendix A? Where did you get them?

10 A Well, broadly we received them from the  
11 U.S. Attorney's Office counsel at various different  
12 points in time.

13 Q All of them?

14 A No. There's likely some research  
15 materials and other articles that may have been  
16 something that we sourced ourselves.

17 Q Do you know which documents you would have  
18 sourced yourselves, as you said?

19 A I couldn't give you a full list of all the  
20 laundry list of every single document we sourced  
21 ourselves. I would have to cross reference it to  
22 what we received from counsel.

23 Q Do you have an objective source that  
24 segregates those two things?

25 A I don't think so, but I'd have to again

1 look at the index to see how it's stratified.

2 Q All right. Now, you referenced some  
3 research efforts that led to the location of some of  
4 these materials; is that correct, sir?

5 A True.

6 Q And did you do that research yourself, or  
7 did someone else do it?

8 A I mean, it was at my direction, so I guess  
9 it depends on how you look at that, but, I mean, did  
10 I physically go and do a Google search, for example,  
11 no. Did I search for specific articles, no. I  
12 would direct my staff to do that.

13 Q Did you search for any articles or source  
14 materials yourself personally?

15 A I did no -- not go out and look for them  
16 in the standpoint of actually doing the searches  
17 myself.

18 Q Okay. So all of the research was done by  
19 another member of your staff, correct, the actual  
20 looking for the documents; is that true?

21 A Again, I don't agree with your premise. I  
22 mean, it's my report, it's my documents, they are my  
23 information. So if you're talking about the  
24 physical aspect of doing the research or looking for  
25 them, that is done at my direction by my staff.



1 Q And none of it was actually done by you,  
2 correct?

3 A Again, I'm not -- I don't know what you  
4 mean by that. I mean, again, everything is done at  
5 my direction, so it's done by me from that  
6 standpoint. I didn't push every button, I didn't  
7 look for every article. That's done by my staff.

8 Q In fact, you didn't push any buttons or  
9 look for any articles yourself, correct?

10 MR. ASHWORTH: Object to the form.

11 A Again, I'll just have to disagree with  
12 you. I mean, it's at my direction. So it's -- I'm  
13 the one doing it. I'm not physically pushing the  
14 button.

15 Q (By Mr. Ray) You didn't ever physically  
16 push the button to look for these articles, correct?

17 MR. ASHWORTH: Object to the form.

18 A I didn't do the search, but after the  
19 search was done and articles were identified, I  
20 pushed the button to review them.

21 Q (By Mr. Ray) Did you review every  
22 document on Appendix A yourself personally?

23 A I believe so, but I'd have to go through  
24 all of them to make sure.

25 (Exhibit 33 marked for identification.)

1 Q (By Mr. Ray) Let's pull up, if we could,  
2 Exhibit 33. All right, sir, this appears to be your  
3 biography on your website. Is that what it appears  
4 to you to be?

5 A I don't know where you got this version.  
6 This looks to be my tax version. I don't think this  
7 is the version on my report.

8 Q Right. Is this -- but -- so if you look  
9 in the bottom left-hand corner, sir, we see, is  
10 FTIConsulting.com your -- is that the website of  
11 your business?

12 A We have to be careful about my business.  
13 FTI Consulting's a publicly traded company. What  
14 was your question?

15 Q You work for FTI Consulting, correct?

16 A Yes.

17 Q And what is your affiliation with that  
18 entity?

19 A I am a senior managing director.

20 Q All right. How long have you been  
21 associated with FTI Consulting?

22 A Let's see, since October of 2015.

23 Q All right. And what is, as a -- you said  
24 you're a senior managing director; is that correct?

25 A Correct.

1 Q All right. And tell us what you do in  
2 that role.

3 A Well, broadly, I guess I'm responsible, is  
4 the word I would use, for various different people  
5 directly, work in broader teams on other different  
6 matters, but, generally, I'm the person responsible  
7 for the final product and, potentially, testifying.

8 Q Is testifying as an expert witness your  
9 primary work?

10 A No.

11 Q What is your primary work?

12 A I mean, most people would consider me a  
13 forensic accountant. So I do, you know, various  
14 different things in the capacity as a forensic  
15 accountant.

16 Q Testifying as an expert is one of them,  
17 correct?

18 A True.

19 Q What percentage of your time would you  
20 estimate you devote to testifying as an expert  
21 witness?

22 A Well, I mean, I guess it depends on how  
23 you define that, but if you're talking about  
24 specifically in a testifying capacity, it's  
25 probably, I don't know, ten hours a month.

1 Q And what about preparing expert reports?  
2 By way of example, how often do you do that?

3 A Are you talking about expert reports in  
4 the capacity of litigation, or are you talking about  
5 expert reports generally?

6 Q We'll first start with litigation.

7 A I mean, it changes over time. I would say  
8 it's probably 75 percent is in the form of  
9 litigation at this point.

10 Q And do you also do work on occasion as a  
11 non-testifying expert?

12 A Yes.

13 Q And tell us broadly what that usually  
14 entails.

15 A Well, first of all, there could be a  
16 consulting role, which I was actually including kind  
17 of within the litigation environment, but then  
18 there's also roles where we're just doing either  
19 valuation work, for example, or tax analysis,  
20 something like that. That would be outside of the  
21 litigation environment, either prior to any  
22 litigation commencing or some type of traditional  
23 purpose, like financial reporting or a tax related  
24 valuation, something like that.

25 Q Have you ever prior to this case been

1 involved in a litigation matter involving wind  
2 energy?

3 A I believe there was -- yes.

4 Q All right. When was that, sir?

5 A It's been a while ago. It's been -- I  
6 would guess it's probably around 15 years ago.

7 Q Do you recall the court in which that was  
8 pending?

9 A No.

10 Q Do you recall the state it was in?

11 A I don't remember where the court state  
12 was, but the project was in Wyoming.

13 Q And what was the litigation about, if you  
14 recall?

15 A It was about some construction cost  
16 overruns.

17 Q All right. And do you recall any of the  
18 parties to the case?

19 A No.

20 Q Do you recall any of the lawyers?

21 A I can't think of who was involved with  
22 that case. It's been a long time ago.

23 Q And what subject matter were you  
24 testifying on in that case?

25 A Related to the potential cost overruns of

1 the project. And I didn't testify, just so we're  
2 clear, but it was related to the overall  
3 construction costs of the project.

4 Q All right. Were you retained as an expert  
5 witness for one of the parties?

6 A Yes.

7 Q All right. Were you estimating the cost  
8 overruns for which party, if you recall?

9 A My remembrance is we were working for the  
10 owner.

11 Q The owner of the project?

12 A Correct. Sorry, my phone rang on my other  
13 line. I apologize.

14 Q No, that's okay. All right. And it was a  
15 dispute with whom? Was it the contractor or --

16 A Correct.

17 Q Okay. So were you attempting to value  
18 the -- what these construction cost overruns would  
19 cost? Was that your role?

20 A No, I wouldn't phrase it that way. I  
21 mean, I'm not an engineer, so I'm not going to be  
22 doing that.

23 Q Well, how would you phrase it? What were  
24 you doing in that case?

25 A So I would be looking at the accumulation

1 of the costs related to the overall costs expended  
2 by the general contractor, various different  
3 approved or unapproved change orders, to look at the  
4 potential cost overrun of the project.

5 Q And what kinds of overruns were these, if  
6 you recall?

7 A I don't remember. I don't remember what  
8 they specifically were in that case.

9 Q Do you remember generally what they were,  
10 any sense at all?

11 A I mean, I could speculate, based on what  
12 generally these type of cases have, but I don't  
13 remember anything specific to this case.

14 Q Do you remember anything at all about the  
15 nature of the overruns?

16 A Well, there was some, but I don't remember  
17 specifically how much or what the reasons were, the  
18 purposes were.

19 Q And did you give -- you said you did not  
20 give any testimony in that case; is that right?

21 A That's my remembrance. I don't remember  
22 giving any testimony.

23 Q Did you draft a report in that case?

24 A I don't even remember that for sure. I'm  
25 sure we were in the process of it, but I just don't

1 remember when it settled.

2 Q You do recall that it did settle, though,  
3 correct?

4 A I mean, obviously, it settled in some way.  
5 I don't remember exactly how, but I don't believe I  
6 ever was deposed. I don't believe I ever testified.

7 Q Do you think you actually formed any  
8 opinions in that case?

9 A I mean, probably, but I don't remember  
10 exactly how those would be memorialized.

11 Q Did that case involve mineral interests in  
12 any way?

13 A I mean, I guess, yes, because there's  
14 obviously something that has to be done when you  
15 construct the site, but, again, I guess some people  
16 would argue whether there's mineral interests or  
17 not, but, it's -- you know, there's a subsurface  
18 aspect to any type of wind farm. Let's just put it  
19 that way.

20 Q But were you opining on anything related  
21 to mineral interests in that case?

22 A I mean, no, not the way you phrased it.  
23 Obviously, there would be costs related to that  
24 particular activity, but I wouldn't be opining on  
25 the actual mining itself.



1 Q And were you aware of any payments being  
2 made to the mineral interest owner in that case? Do  
3 you recall anything about that?

4 A I do not.

5 Q All right. Have you had any other  
6 experience with litigation matters involving the  
7 wind energy industry?

8 A I can't think of one.

9 Q Do you have any experience in the wind  
10 industry in non- -- in a non-litigation context?

11 A It seems like there have been a couple of  
12 cases that had wind farms on them, but nothing that  
13 I can think of off the top of my head.

14 Q It wasn't anything you were looking at  
15 specifically as to your engagement; is that fair?

16 A I mean, I would consider it was more of a  
17 peripheral aspect. It wasn't the main aspect of the  
18 case.

19 Q And it wasn't anything you were  
20 specifically asked to form views on in those  
21 matters; is that true?

22 A Yeah, that I don't remember. I don't  
23 remember what the attorneys may have asked me to  
24 look at in that way. I don't remember.

25 Q Do you recall in any of those matters

1 being asked to opine on payments that might be due  
2 to mineral owners?

3 A No, I don't remember that aspect coming  
4 up.

5 Q This is the first case in which you've  
6 rendered that type of opinion; is that correct?

7 A No.

8 Q What other case have you rendered an  
9 opinion about payments due to mineral owners in a  
10 wind energy project?

11 A Okay. So if we're talking about specific  
12 to wind projects, which was not your last question,  
13 I can't think of one off the top of my head.

14 Q All right, sir. So we've looked at  
15 Appendix A that listed the documents that you've  
16 relied on after -- as of September 18th of 2020;  
17 true?

18 A It's not on the screen anymore, but, yes,  
19 that's what that document represents. There you go.  
20 Thank you. Yes.

21 Q All right. Now, you said you've looked at  
22 the three expert reports after that, correct?

23 A Yes.

24 Q All right. And you also said you believe  
25 you've received some other information that you

1 would have on an index that FTI maintains, true?

2 A I said that's likely, yes.

3 Q All right. And are there any other facts  
4 that you have relied on that you've received orally  
5 at any time?

6 A I mean, you have the word facts there. I  
7 guess it's a little careful about determining what  
8 the facts are, but has there been other information  
9 that's been given to me verbally, probably.

10 Q Did you rely on that information in  
11 forming your opinions?

12 A I mean, obviously, I took it at face value  
13 to a certain extent. As a forensic accountant, we  
14 would be corroborating that with other information  
15 to the extent possible. You used the word, rely  
16 upon. I don't remember a specific statement that  
17 somebody said that, okay, that's the only  
18 information you have, so I'm going to rely on that  
19 statement to make my conclusion. I can't think of  
20 anything like that.

21 Q But was there any oral information that  
22 you relied on, in part, in forming your opinions?

23 A I mean, this has been a relatively long  
24 case, and so, sure, I'm sure there's something that  
25 somebody said that I considered and potentially

1 relied upon to basically form my opinion.

2 Q All right. And tell us all the oral  
3 information that you recall that you relied on in  
4 that sense that you just described.

5 A Again, I've already said I can't think of  
6 anything I relied upon in forming my ultimate  
7 opinions and conclusions, but somebody may remind me  
8 about something that was said that was helpful to my  
9 opinion overall.

10 Q You just can't identify anything  
11 particular as we sit here right now; is that true?

12 A I'm sorry, you cut out on me on the first  
13 part of your question. Could you say that again?

14 Q Sorry. You can't identify anything as we  
15 sit here right now; is that true?

16 A I can't think of anything that I relied  
17 upon that formed my ultimate conclusion, correct.

18 Q All right. Sir, if we could go back to  
19 Exhibit 33 for a moment. All right. Do you see  
20 there, sir, where it indicates that you have a  
21 Bachelor of Science Degree from the University of  
22 Denver; do you see that, sir?

23 A Yes.

24 Q All right. Is that the only degree from  
25 an institution of higher learning that you have?

1 A Yes.

2 Q Did you attend any other institutes of  
3 higher learning?

4 A No.

5 Q All right. From what years were you at  
6 the University of Denver?

7 A Let's see, I would have been there from  
8 1982 to approximately 1988.

9 Q What was your major field of study?

10 A Accounting.

11 Q Were you a full-time student all of those  
12 years?

13 A No.

14 Q All right. What periods of time were you  
15 a full-time student, and what periods were you not?

16 A So I graduate my undergraduate degree in  
17 1986, so the four years, and then I was taking MBA  
18 level classes for the time period after that until  
19 my scholarship money ran out.

20 Q So you received a bachelor's degree of  
21 accounting in 1986, true?

22 A Correct.

23 Q And were you a continuous full-time  
24 student from 1982 through 1986?

25 A Whenever you look down, you cut out on me.

1 I can't hear what you say. So just letting you know  
2 that, but can you say that again?

3 Q Yeah. From 1982 to 1986 were you a  
4 full-time undergraduate student at the University of  
5 Denver?

6 A Yes.

7 Q And did you graduate with any honors?

8 A Yeah, I was like summa, magna cum laude or  
9 something like that.

10 Q Do you recall which one?

11 A I thought it was all of those, but I would  
12 have to look at my -- my diploma to look at it for  
13 sure.

14 Q All right. And so were you a full-time  
15 MBA student from 1986 through 1988?

16 A No. I mean, I was working since 1982, so  
17 I was more transitioning to a full-time job and just  
18 taking classes, as opposed to the opposite during  
19 the other time frame.

20 Q How many hours did you obtain toward an  
21 MBA, if you recall?

22 A I don't remember the number of hours, but  
23 looking back, I probably should have finished. I  
24 think I was only six classes away from completing  
25 it.

1 Q And was this coursework all taken at the  
2 University of Denver as well?

3 A Yes.

4 Q And why did you not complete that program?

5 A As I kind of mentioned before, my  
6 scholarship money ran out. I was -- already been  
7 employed for four or five years at that point. I  
8 just didn't ever finish it, because I didn't want to  
9 pay the full boat.

10 Q All right. So you said that you were  
11 employed first in 1982, correct?

12 A Correct.

13 Q And is that -- if it's okay with you, I'll  
14 just call it, is it the Pfleiger firm? Is that a  
15 fair way to refer to it, rather than every name, or  
16 if it's -- if I'm mispronouncing it, please correct  
17 me.

18 A No, that's not the first firm I worked at.

19 Q All right. What is the first firm that  
20 you worked at?

21 A It's a company called Baller, B-A-L-L-E-R,  
22 and Associates.

23 Q Okay. And you started there in '82?

24 A Correct.

25 Q And what job did you hold at the outset at

1 that firm?

2 A Well, first I would call it kind of like a  
3 gofer, basically go do whatever you are asked to do,  
4 kind of an administrative role.

5 Q All right. How long were you in the gofer  
6 role?

7 A Relatively short period of time. I proved  
8 that I had computer skills that most people didn't  
9 have at that time, as well as experience in the tax  
10 world, so I got involved with some of the  
11 computerized aspects in the tax world very quickly.

12 Q Were you promoted to some position other  
13 than the gofer role?

14 A I don't remember there being a title or  
15 anything, so, no, I don't think there was  
16 necessarily a position, per se.

17 Q All right. So how long was it after you  
18 started that your role changed? I mean, was it two  
19 months, six months, one year?

20 A I think the computerized aspects changed  
21 probably within the first two or three months. The  
22 tax season, as you probably are well aware of, of  
23 January through April is the big time frame,  
24 especially back then. So it would have been, you  
25 know, with that six, seven months after I started



1 before I really got involved with that particular  
2 area.

3 Q Were you preparing returns? Is that what  
4 you were doing?

5 A I mean, I guess, technically, the answer  
6 is yes, but, of course, I'm not signing the returns,  
7 so I'm not technically the preparer, but I was  
8 assisting with either accumulation of documents,  
9 organizing of documents or filling out computerized  
10 input forms.

11 Q And was that for individuals, businesses  
12 or both?

13 A Both.

14 Q Was it more one or the other?

15 A At that specific time?

16 Q Yes, sir.

17 A I don't know. I won't guess. I don't  
18 remember. It's been a long time ago.

19 Q But were you assisting another tax  
20 preparer in inputting data? Is that what you were  
21 doing, or was it something else?

22 A I mean, I was basically acting like a  
23 staff accountant for the ultimate preparer of the  
24 return, who, of course, would review all my work.

25 Q And how long were you in that role?

1 A At that firm you're talking about?

2 Q Yes, sir.

3 A So that would kind of stay for the whole  
4 time while I was there, which I left in  
5 approximately 1984.

6 Q And where did you go in 1984?

7 A To a firm called Halliburton, which is  
8 H-A-L-L-I-B-U-R-T-O-N, Hunter & Associates.

9 Q Okay. So as the line item on your bio set  
10 forth in Exhibit 33, relating to 1982 to 1990,  
11 that's actually referring to three firms and not one  
12 firm; is that true?

13 A Well, first of all, this is not my bio. I  
14 would not consider what you have on the screen my  
15 bio. So I don't know where you got this from. We  
16 have a new website, so maybe they have the wrong bio  
17 on the website for some reason.

18 Q Did you approve what --

19 A This is not --

20 Q Did you approve what went --

21 A -- information related to me. It's a  
22 tax-related bio, but it's not my bio for this case.  
23 I want to make that very clear, but I don't have the  
24 second page that you're looking at, so if you want  
25 to go to the second page, then I can answer your

1 question.

2 Q Do you see the line item at the top of the  
3 second page, sir?

4 A Yes. So this is -- as your question you  
5 asked, this is basically the three firms during that  
6 time frame.

7 Q All right. Did you have a chance to  
8 approve this before it was posted to the website?

9 A Apparently not.

10 Q And did you --

11 A It literally went live, I think,  
12 yesterday, is literally what I think happened, so  
13 I'll have to check in on that.

14 Q And do you believe this is erroneous in  
15 any way?

16 A Go back to the first page. I don't think  
17 it's necessarily erroneous. Hold on a second. Can  
18 you go to the second page a second? I'm not  
19 technically a member of the Colorado Society of CPAs  
20 anymore, so that would be one thing, I guess, that's  
21 technically erroneous. I'm not sure it's a major  
22 item, but, otherwise, it looks accurate from a tax  
23 standpoint.

24 Q Is it inaccurate from any other standpoint  
25 in your opinion?

1           A       It's not really inaccurate. I used to be  
2 a member of the Colorado Society, I'm just not a  
3 member anymore. So I don't necessarily say it's  
4 inaccurate, it's just dated. So again, I don't know  
5 where they got this from, to answer that question.

6           Q       Is there anything else that either should  
7 or should not be on there, other than your  
8 membership in the Colorado Society of Certified  
9 Public Accountants?

10          A       Yeah, I'm not sure how to answer that  
11 question. I mean, again, there's a CV in my report.  
12 That should be what you're using related to my bio  
13 or CV.

14                   (Exhibit 18 marked for identification.)

15          Q       (By Mr. Ray) All right. Well, let's go  
16 ahead and pull up Exhibit 18, so we can have what  
17 you want, sir. That's your expert report, correct?

18          A       Looks that way, yes.

19          Q       The same document you looked at the past  
20 couple of days, right?

21          A       At least once in the last couple of days,  
22 yes.

23          Q       All right. Let's go to page 62, if we  
24 could.

25          A       I can see it now, if that's what you're

1 waiting --

2 Q Is this then, sir, the accurate and  
3 correct bio that you ascribe to?

4 A Can you scroll to the next page? Keep  
5 going. I'm sorry, it's not there, so, obviously, it  
6 would be probably more information on this  
7 particular page, just because of the passage of  
8 time, but those first two pages are what I would  
9 consider my -- you know, the bio portion of my CV,  
10 yes.

11 Q All right. So the page we're looking at,  
12 it has the same line item on it about your work from  
13 1982 to 1990, correct?

14 A Correct.

15 Q All right. Now, so I think we were on  
16 Halliburton Hunter. What did you do at Halliburton  
17 Hunter?

18 A So, again, it's kind of the same thought  
19 process of basically the computerized and the tax  
20 side of the equation, but I was technically hired as  
21 like director of write-up services or something like  
22 that, where I was basically implementing a  
23 computerized software to do monthly, quarterly and  
24 annual financial statements for clients.

25 Q Were those for businesses?

1 A There was some personal financial  
2 statements, but most of those would be businesses.

3 Q Did that firm focus on any specific type  
4 of business, or was it just the whole spectrum?

5 A That's a good question. I would say each  
6 partner definitely focused, so if you want to look  
7 at it that way, we would be talking about oil and  
8 gas, chemicals, quite a bit of ranching, you know,  
9 those type of industries.

10 Q Did you work with any particular partner,  
11 or did you work with many?

12 A I worked with all of them, because, again,  
13 I was kind of spearheading that particular area, so  
14 all of their clients had those needs.

15 Q You were working on kind of a data input  
16 function and getting that up and going; is that  
17 correct?

18 A No. I had two other direct reports that  
19 would be doing the data input. I was the -- again,  
20 I think the word they used was director or manager,  
21 some term like that, that basically I was  
22 responsible for the functionality of it and make  
23 sure that the data that came out of it was accurate  
24 and complete.

25 Q So what did you, yourself, sir, do on a

1 day-to-day basis? I understand these other people  
2 did data entry. What did you do?

3 A So in that area I would be responsible for  
4 the formation. So if we had a new client came in, I  
5 would be responsible for getting that client up and  
6 running, again, with other people's help that were  
7 underneath me, to, basically, get the project  
8 started. At that point I would be reviewing the  
9 monthly, quarterly, whatever, however often those  
10 financials were done, to make sure that everything  
11 was complete and accurate, as I mentioned before.  
12 Despite the director of write-up services, I was  
13 still doing more and more tax work, and so my days  
14 were split doing those types of functions.

15 Q And was that the only role that you had at  
16 Halliburton Hunter?

17 A I mean, there's other things that would  
18 happen, like, you know, there was some business  
19 valuation work that was being done at that point.  
20 There would be special consulting projects related  
21 to some type of modeling aspect, so there would be  
22 other CPA traditional services that would be  
23 involved, but that's generally what I did.

24 Q How long were you at that firm?

25 A Let's see, I was there from '84 to about

1 1989.

2 Q Why did you leave?

3 A My to-be partner, Harold Classick, which  
4 is where the name comes from in the next firm, left  
5 the firm in 1988. Ever since he left, it just  
6 wasn't the same, because we were very good friends,  
7 very good business associates. So I got a little  
8 bit dis-enamored with the firm, so I left the firm  
9 to go to Pfleiger, Alderman & Company which was a  
10 higher end firm at the time.

11 Q And I believe I forgot to ask you this,  
12 sir. Why did you leave Baller & Associates?

13 A Just the opportunity for something, you  
14 know, bigger and better.

15 Q All right. So Pfleiger, Alderman, were  
16 you there from '89 to '90?

17 A Correct.

18 Q All right. And what did you do there?

19 A So I think my title would have been  
20 something like tax manager, something like that,  
21 which is a very specific term in the industry, but I  
22 would be doing audits, tax and other consulting type  
23 services for the clients that they had.

24 Q Was that the only position you held at  
25 that firm?



1 A Correct.

2 Q What kind of clients were you doing tax  
3 and audit work for?

4 A One partner had a lot of agricultural type  
5 things, including ranching, but they had a lot of  
6 meat packing plants, things like that. The other  
7 partner had a lot of oil and gas and technology type  
8 companies. There was two partners there.

9 Q Were you ever doing valuation of minerals  
10 at that firm?

11 A I don't remember doing valuation of  
12 minerals at that firm, no.

13 Q All right. When did you leave Pfleiger,  
14 Alderman?

15 A It was October, I believe, of 1990.

16 Q Why did you leave?

17 A Because, like I said before, my, you know,  
18 now partner, Harold Classick, which is where our  
19 firm, Classick Hazel, name comes from, had started  
20 his own firm in 1988. There was an opportunity to  
21 join him, so I took that opportunity.

22 Q All right. And was that first called  
23 Classick Financial, or was it always called Classick  
24 Hazel?

25 A So Classick Hazel is the traditional CPA

1 firm, Classick Financial was our wealth management  
2 firm.

3 Q And I take it you were a part owner of  
4 Classick Hazel, PC, correct?

5 A Yes.

6 Q Were you also an owner of Classick  
7 Financial?

8 A I don't remember how the ownership worked.  
9 My partner was the CFP, so he really ran that part.  
10 I don't remember how the ownership worked.

11 Q Did you do -- did you render any services  
12 for Classick Financial?

13 A Yes.

14 Q All right. Tell us what those were.

15 A They were more in support of my partner.  
16 They might be financial statements, might be  
17 personal financial statements, might be analysis of  
18 investments. It's just basically things that he  
19 would need assistance with.

20 Q Did you do any valuation of minerals in  
21 your role with Classick Financial?

22 A What's your definition of minerals, by the  
23 way? Are we talking about hard minerals?

24 Q What's your definition of minerals?

25 A It could be broad. I mean, you could take

1 minerals as, basically, anything out of the ground,  
2 or you can take it more in the traditional sense of  
3 typically hard rock minerals.

4 Q And how would you personally define it?

5 A I typically define it broadly, but, again,  
6 that's why I'm trying to answer your questions  
7 concisely, to make sure that's what you meant by  
8 minerals.

9 Q All right. Well, let's define it broadly  
10 in your sense then, sir. Did you do any valuation  
11 of minerals, defined broadly?

12 A Well, I mean, if we're talking about  
13 broadly, which would include oil and gas activities,  
14 that happened pretty early on in my career. That  
15 probably even started back in Halliburton days,  
16 because one of the partners had a lot of oil and gas  
17 work. But, I mean, it would be a two or three  
18 project type of thing a year. It was a relatively  
19 small portion before 1990.

20 When I started my own firm, I started  
21 doing more and more valuation work, and so then it  
22 might be slightly more, but it was still kind of a  
23 secondary aspect to my practice.

24 Q Well, let's step back to the first time  
25 you can remember valuing minerals. Tell us what you

1 were valuing.

2 A Well, I mean, typically, in the oil and  
3 gas context, you're looking at two things. You're  
4 looking at the valuation of either the property  
5 itself or the business operating the property, or  
6 you're looking at what we would call the valuation  
7 of reserve study of the physical materials  
8 themselves.

9 Q And have you ever valued the physical  
10 materials themselves, yourself?

11 A Sure. We've done reserve studies over  
12 time.

13 Q All right. When is the first time you  
14 recall doing that?

15 A I remember being involved with a couple of  
16 different projects back at the Halliburton Hunter  
17 time frame, because, again, one of the partners was  
18 focused on oil and gas.

19 Q And were you personally the one that  
20 placed a value on reserves, as you say?

21 A Well, I mean, I wasn't the "expert"  
22 actually preparing the report, so I guess,  
23 technically, I wasn't putting the value on it, but  
24 was I assisting with them to determine the value,  
25 the answer would be yes.

1 Q What did that assistance consist of?

2 A I'm sorry, you cut out again. Are you --

3 Q What did the assistance -- what did the  
4 assistance consist of?

5 A So I was kind of like -- again, like the  
6 manager role. I wasn't a partner. So I was  
7 assisting the partner. So I was, basically, in  
8 charge of the project, typically working with lower  
9 level from an organizational chart, staff, to  
10 basically put all the information together to come  
11 to an ultimate conclusion, which, of course, could  
12 be updated, changed, whatever by the partner,  
13 because it was his or her opinion that basically  
14 would be rendered.

15 Q And who there -- we'll focus on  
16 Halliburton Hunter right now. Who was the person  
17 that actually said the reserves are worth X? Was  
18 that you or someone else?

19 A I mean, again, I would be assisting with  
20 coming up with that conclusion, but, ultimately, the  
21 partner would be responsible for that, so that would  
22 be their opinion at that point.

23 Q And did you understand that the oil and  
24 gas was, basically, a commodity that had a market  
25 price?

1 A You have to be careful about that thought  
2 process, but -- I mean, that's true, but that's not  
3 what valuation relates to.

4 Q Well, what does valuation relate to from  
5 your perspective at Halliburton Hunter?

6 A Well, I don't think it would just be just  
7 Halliburton Hunter; we're talking more broadly now.  
8 So are we talking broadly, or are we talking  
9 specific to Halliburton Hunter?

10 Q I'm talking about specific to Halliburton  
11 Hunter right now and what you were valuing there.

12 A So again, as we talked about before, I was  
13 valuing the property, valuing the business, or I was  
14 valuing the reserves study, as we called it before.  
15 So none of those would be what I would call the  
16 commodity market, which is a different aspect of  
17 the -- of the financial analysis.

18 Q Well, so the oil or gas would only be  
19 worth what you can sell it for, true?

20 A That's true.

21 Q And those prices are set on an open  
22 market, are they not?

23 A Yeah, but again, it's -- the value of the  
24 mineral depends on where it's located, for example.  
25 There's a freight cost to get it to where you want

1 it or a pipeline cost, whatever it might be, so  
2 you're being way too generic and way too summarized  
3 as the overall value of any type of asset.

4 Q All right. Is there anything else that  
5 goes into it besides freight cost and pipeline cost?

6 A Well, sure. I mean, it depends on what  
7 grade you have, it depends on what location that  
8 particular mineral or oil and gas comes from.  
9 There's all sorts of dynamics that change the  
10 potential value from a commodity standpoint of that  
11 particular item.

12 Q Well, the market accounts for that, does  
13 it not? They have different price for different  
14 grades, true?

15 A True.

16 Q And --

17 A But it doesn't account for everything. It  
18 doesn't account for how far away you have to come  
19 from. So the market doesn't account for all of  
20 those dynamics, if that's what you're getting at.

21 Q But those would all be taken into account  
22 by you in your model, true?

23 A That's true.

24 Q So you would look to the market for the  
25 grade, correct? The grade price --

1 A Yes.

2 Q -- would be set by the market, right?

3 A Yes.

4 Q And then you would have to take into  
5 account things like any type of transportation  
6 costs, correct?

7 A That's one item, yes.

8 Q What else would you take into account?

9 A Again, you have to look at the supply and  
10 demand. Yes, the market establishes that price,  
11 but, again, there may be other dynamics related to  
12 your specific situation, that you either don't sell  
13 at that particular point in time or that you sell  
14 later, just because of the dynamics of the supply  
15 and demand at that particular point.

16 Q Anything else you can identify?

17 A No. I tried to give you some examples of  
18 it.

19 Q You can't give us any other examples right  
20 now?

21 A Other examples of what?

22 Q Of things you would take into account in  
23 valuation.

24 A Valuation broadly, or are we talking about  
25 valuation of a commodity?



1 Q No, I'm talking about valuation of  
2 minerals, sir. We've talked about that the grade  
3 would be established by the market, correct?

4 A Okay. Again, you're jumping all over the  
5 place. No. The commodity is different than the  
6 minerals, so those are two different aspects of  
7 the -- of the aspect of the project. There's a  
8 commodity price, and then there's the mining or the  
9 actual minerals themselves. You're trying to make  
10 it sound like those are the same thing, they're not.

11 Q How are they different?

12 A It depends on what mineral you're talking  
13 about. If you're talking about oil where there's a  
14 very specific commodity price, it's different than  
15 if you're talking about, you know, aggregates, like  
16 we're talking about in this case, where it's a  
17 totally different dynamic. You're trying to be very  
18 summarized to things that have drastically different  
19 answers.

20 Q Have you ever valued aggregate before,  
21 sir?

22 A Yes.

23 Q When?

24 A That comes up routinely. I have several  
25 current cases where we're valuing aggregates.

1 Q Give me one example besides this case.

2 A I have to be careful about  
3 confidentiality. Let me think if I can give you a  
4 specific example. We have a large matter right now  
5 where I believe there's a total of 26 different  
6 properties that have aggregates, you know, some form  
7 of aggregates on them. They haven't been disclosed  
8 that I'm aware of at this point, but they would  
9 generally be in the southeastern portion of the  
10 United States.

11 Q So what would be the process of valuing  
12 aggregate generally?

13 A I mean, generally, you're looking at some  
14 type of business activity, whether it's a kind of  
15 complete cycle, where you're actually the ultimate  
16 seller to the end user or some type of other  
17 developer where you're basically doing more of that  
18 above the wholesale aspect of it, so it can be at  
19 different -- different stages of the minerals being  
20 used.

21 Q So were you there valuing the overall  
22 enterprise or the specific aggregate itself or maybe  
23 both?

24 A It depends. As I already said, there's  
25 different -- different locations are at different

1 stages of the life cycle. So some are the  
2 enterprise overall, and some would be at a lower  
3 life cycle where they're selling off to some plant,  
4 for example, that basically has used those  
5 materials. It's not being done by them specifically.

6 Q Is there any situation there where you  
7 were actually valuing aggregate in place in the  
8 ground?

9 A I guess I'm trying to think of as opposed  
10 to what? I mean, you're -- you have to value the  
11 aggregate in the ground to, basically, take it to  
12 the next step. So depending on where you are in  
13 that life cycle, you have to know that answer before  
14 you get to the ultimate conclusion.

15 Q And is that based on the market price of  
16 aggregate in that area?

17 A That's definitely a key component, yes.

18 Q All right. I take it the transportation  
19 costs would be another component, right?

20 A True.

21 Q Are there any other components from your  
22 perspective?

23 A Well, again, it depends on what type of  
24 grade it is, it depends on what type of usage you  
25 have in that particular area. It depends on, you

1 know, your own cost structure, for example. It  
2 depends on what type of equipment you have. It  
3 depends on a lot of different factors.

4 Q The market would certainly account for the  
5 grade, would it not?

6 A Well, to the ultimate conclusion of where  
7 you sell it, but, again, there's multiple different  
8 places you could sell it.

9 Q But there's a market price at any given  
10 location; is that true?

11 A I mean, there's generally a market price,  
12 but it's not like it's a commodity from that  
13 standpoint. There is some supply and demand  
14 aspects, but there's negotiation involved.

15 Q But it would be true, in a given  
16 geographic location, that there's pretty much a  
17 going rate for something like aggregate; is that  
18 true?

19 A That's fair, I mean, at each point in  
20 time. It's not going to be static over a long  
21 period of time, of course.

22 Q But I mean, you're aware that aggregate is  
23 pretty generally available in many locations, right?

24 A Again, you cut out on me the first half of  
25 your question there.

1 Q I mean, you're aware that aggregate is  
2 pretty generally available in many locations, true?

3 A That's fair.

4 MR. ASHWORTH: Hey, Ryan?

5 MR. RAY: Yes.

6 MR. ASHWORTH: Do you mind if we take a  
7 quick break? I need to use the rest room. We've  
8 been at it for about an hour now.

9 MR. RAY: No, let's take a few minutes.

10 THE WITNESS: Okay. Five minutes, is  
11 that what we're saying?

12 MR. ASHWORTH: That works.

13 MR. RAY: Five, ten, something like that,  
14 yeah.

15 THE WITNESS: Okay.

16 THE VIDEOGRAPHER: We're off the record at  
17 11:02 a.m.

18 (A recess was had.)

19 THE VIDEOGRAPHER: We're back on the  
20 record at 11:12 a.m.

21 Q (By Mr. Ashworth) All right, sir. Before  
22 we left, we were talking about some of your work at  
23 the -- I believe we were talking about Classick and  
24 Music. What did you do in the CPA side, what was  
25 your role there?

1 A Sorry, what did you call the firm?

2 Q Classick and Hazel PC, is that the name of  
3 it?

4 A Oh, I thought you called it something  
5 else. I apologize. You're cutting out on me from  
6 time to time, so it's hard to hear you sometimes, so  
7 I apologize. Classick Hazel, PC, what was the  
8 question related to it?

9 Q What was your role in that business?

10 A Well, obviously, I was a founding partner,  
11 a named partner. You know, both myself and Harold  
12 Classick had extensive tax practices, as well as  
13 write-up services. As I mentioned before, he was a  
14 CFP, a certified financial planner, so he ran the  
15 wealth management side, and I focused more on the  
16 valuations and some litigation support besides my  
17 tax practice.

18 Q All right. If we could go back briefly to  
19 Exhibit 18 and page -- I'm sorry, page 62 of it.  
20 Does that, sir, list all of the certifications that  
21 you hold?

22 A Yes.

23 Q All right. Now, I take it -- when did you  
24 become a certified public accountant?

25 A In 1986.

1 Q All right. And I take it was that in  
2 Colorado?

3 A Yes.

4 Q Have you been a CPA in any other state?

5 A I'm not sure what you mean by that. I  
6 mean, you can be a CPA in other states, but am I  
7 licensed in other states, no.

8 Q Yeah. Have you ever been licensed in any  
9 state other than Colorado?

10 A No.

11 Q Have you held that certification at all  
12 times from 1986 through today?

13 A You totally cut out on me there. I have  
14 no idea --

15 Q I'm sorry. Have you held that  
16 certification from all times from 1986 through  
17 today?

18 A I sure hope so, yes.

19 Q All right. When did you become certified  
20 in financial forensics?

21 A That was later in time. It's a relatively  
22 new designation. I would have to look back at my  
23 records, but it would be approximately around 2010.

24 Q How about -- we see there, sir, you're a  
25 certified valuation analyst. Is that true?

1 A Yes, a CVA.

2 Q What entity gives that designation?

3 A The National Association of CVAs.

4 Q How long have you held that analysis -- or  
5 designation? Sorry.

6 A Yeah, I'm trying to remember exactly.  
7 That would have been through my Classick Hazel days,  
8 so I would say it was right around 1995.

9 Q And as a part of getting that  
10 certification, did you have any training on the  
11 valuation of minerals?

12 A I mean, there's probably a small aspect of  
13 that, because they talked about hard assets, but  
14 it's generally more of a valuation for businesses.

15 Q Do you recall anything they told you about  
16 the valuation of minerals in the course of getting  
17 that certification?

18 A I mean, I don't remember any things.  
19 We're talking about, again, 1995 and before, so I  
20 don't remember exactly the course material.

21 Q Do you remember anything generally about  
22 the valuation of minerals?

23 A Specific in that case?

24 Q Yes, in that class.

25 A No, I don't remember anything specific



1 about that class at all, much less related to the  
2 minerals specifically.

3 Q All right. How about being an accredited  
4 senior appraiser? When did you receive that  
5 certification?

6 A Let's see, that would have been around --  
7 let me think about that a second. It would be  
8 somewhere around 2005.

9 Q And was there any training on the  
10 valuation of minerals in that course of study that  
11 you recall?

12 A That one was much more likely, because the  
13 valuation of ASAs is much broader, may cover  
14 everything from jewelry to businesses and everything  
15 in between, real estate, so there was likely classes  
16 that would talk about hard assets and specifically  
17 related to minerals.

18 Q Do you recall anything about that training  
19 that you received specific to minerals?

20 A I mean, again, there's four classes that I  
21 took during that time frame, starting back in the  
22 year 2000, I believe, was the first class. I don't  
23 remember anything specifically about the class at  
24 all, but, again, it was a pretty broad curriculum.

25 Q Now, do you not remember anything specific

1 to the class at all over the entirety of the classes  
2 you took or just the first one?

3 A I mean, you know, because I'm a valuation  
4 professional and I've been doing this for a long  
5 time, I don't remember exactly what knowledge was  
6 informed by that specific class or any of the four  
7 classes from that time frame, related to the  
8 valuation of businesses, much less the valuation of  
9 mineral estates. So I don't remember anything  
10 related to specific dynamics I learned then as  
11 opposed just to my ongoing practice.

12 Q All right. Sir, you used the word mineral  
13 estate. Do you have an understanding of that phrase  
14 that you used?

15 A I mean, I guess you can define it for me  
16 if you would like, but I know how I used it.

17 Q How did you use it?

18 A Basically, someone that has an estate  
19 that, basically, has a mineral right of some type.

20 Q You also understand that there is what's  
21 called a surface estate?

22 A I've heard that term before, yes.

23 Q And how would you define that term, sir?

24 A Well, typically, when you talk about the  
25 surface as opposed to the subsurface, you're talking

1 about just the ground above, you're talking about  
2 the physical ground above the mineral estate.

3 Q And do you understand that the mineral  
4 estate and the surface estate have different rights?

5 A Are you talking about specific to this  
6 case, or are you talking about broadly?

7 Q I'm just talking about generally right  
8 now, sir.

9 A If they're bifurcated, they would have  
10 different rights, yes.

11 Q And what would, in general, the rights of  
12 the surface estate owner be?

13 A Again, we're talking broadly, right?

14 Q Yes, sir, just your understanding in  
15 general.

16 A I mean, they have the rights for anything  
17 above the ground, basically.

18 Q Do they ever have any right to break the  
19 ground in any way?

20 A They being the surface owners?

21 Q Yes, sir.

22 A And, obviously, they're not the mineral  
23 owners as well, right?

24 Q Correct.

25 A So it's a situation where there's a

1 surface owner that does not have the mineral rights,  
2 do they have the right to break the ground in any  
3 way?

4 Q Yes, sir.

5 A You know, I'm not a lawyer. That probably  
6 would be a legal conclusion. I'm not sure I should  
7 opine on if they have the rights in any way. They  
8 probably do.

9 Q Do you have -- you understand that there  
10 certainly are some circumstances, which they  
11 probably do, as you said, correct?

12 A I can see that being the case, but, again,  
13 I shouldn't be making legal conclusions about what  
14 rights or rights they don't have.

15 Q That's something that's beyond the scope  
16 of your expertise, true?

17 A I mean, it's definitely beyond the scope  
18 of my expertise from a legal conclusion standpoint,  
19 because, first of all, I'm not a lawyer, and, second  
20 of all, I'm not going to make legal conclusions  
21 anyway, but if you're talking about whether I  
22 understand the differences we've been talking about.

23 Q Yes, and so you understand that there are  
24 situations in which the surface owner may be able to  
25 break ground for some purpose, true?

1           A     Again, I'm not aware of that happening. I  
2 wouldn't be surprised if they were able to do that  
3 in certain circumstances.

4           Q     Like, for example, they might be able to  
5 build a house, true?

6           A     Well, I mean, again, it depends on what  
7 kind of house it is, whether you're, you know,  
8 breaking the ground or not, I guess, so it depends  
9 on what you're asking there.

10          Q     Do you think that the surface owner would  
11 have the right to put a house in the subsurface at  
12 all?

13                   MR. ASHWORTH: Object to the form.

14          A     I don't know. I'm not going to make that  
15 kind of legal conclusion.

16          Q     (By Mr. Ray) Is that because it's beyond  
17 the scope of your expertise as a non-lawyer?

18          A     Well, I'm not going to make a legal  
19 conclusion, because I'm not a lawyer, so, again, do  
20 I understand the aspects of what a piling is or what  
21 a basement looks like or something like that that  
22 would be subsurface? Of course I understand that.

23          Q     And you understand that surface owners  
24 have the ability to do that in general terms, true?

25          A     Again, I don't know that one way or the

1 other.

2 Q All right. Going back to Classick Hazel,  
3 sir, did you do any valuation of minerals at that  
4 firm?

5 A Well, again, if we're defining it broadly,  
6 I definitely did some oil and gas. I'm trying to  
7 think if there's any hard rock minerals. I can't  
8 think of any off the top of my head.

9 Q Have you ever valued hard rock minerals in  
10 your career, sir?

11 A Well, we've already talked about some, so  
12 I'm not sure what you're asking there.

13 Q All right. Tell us all the times you have  
14 valued hard rock minerals that you recall, that you  
15 have not mentioned previously.

16 A Wow, I mean, I couldn't give you a full  
17 line list of all of those. I've done multiple cases  
18 within the last five years in the coal industry,  
19 I've done multiple cases in the gold industry. I've  
20 already talked about the large case with the  
21 aggregates. Again, you get to decide if you  
22 consider that hard rock or not. I have a zinc  
23 project that's just started up --

24 Q Did you say zinc, sir? I'm sorry. You  
25 cut off on us. Did you use the work zinc?

1           A       Zinc, yeah, zinc mine. Copper would be  
2 another example. I'm just trying to think of all  
3 the minerals, as opposed to try to, you know,  
4 stratify them. Uranium would be another example.  
5 There's probably others, but that's the ones I can  
6 think of off the top of my head. Did I say gold? I  
7 know --

8           Q       Yes, sir, you did say gold.

9           A       Gold would be another.

10          Q       All right. And so did any of those  
11 involve the mineral estate and the surface estate  
12 being owned by different people?

13          A       I don't know. I would think that maybe a  
14 couple did, just because of the dynamics of the  
15 mines, but I'd have to double-check all of those  
16 cases.

17          Q       So you believe that there probably were a  
18 couple of the coal mine cases that involved that; is  
19 that true?

20          A       That's not the ones I was specifically  
21 mentioning, but that would be a good example, yes.

22          Q       You think you've been involved in a coal  
23 mine case before where there was different mineral  
24 and surface ownership?

25          A       Correct.

1 Q Did you have any understanding in that  
2 case how the mineral owner and the surface owner  
3 were paid for production of coal?

4 A I don't -- I think in the coal mine  
5 situation, they were the same owner, so that dynamic  
6 wouldn't come into play.

7 Q All right. Was there any of these cases  
8 where there was the other dynamic, where there was  
9 different ownership?

10 A So I remember a gold case, and then I also  
11 remember a copper case where I believe the surface  
12 was owned by a different party than the mineral  
13 rights.

14 Q Okay. And so were both of these  
15 substances being mined in those cases on kind of an  
16 ongoing basis?

17 A Yeah, obviously, at different points and  
18 times, they had been shut down and reopened, and  
19 shut down and so forth, but, yes, they were active  
20 mining sites.

21 Q So let's start in the gold case. Did you  
22 have any understanding of how the mineral owner was  
23 paid in the gold case?

24 A Yes.

25 Q Was that based upon gold that was actually



1 produced?

2 A I don't believe so. I believe there was a  
3 lease in place where they got a set fee.

4 Q Was that a royalty off of production, or  
5 was it just kind of like a flat fee?

6 A Now that you mention it, I think it was  
7 both. I think there was a flat fee, and then there  
8 was a royalty on top of that.

9 Q Did they get, like, a bonus at the outside  
10 and then an ongoing royalty over time?

11 A Again, I don't remember exactly, but,  
12 vaguely, it seems like they were getting a set fee  
13 on a monthly basis, and once they basically met  
14 certain targets, they got a royalty on top of that,  
15 but it wasn't one-time payments. They were ongoing  
16 payments for both.

17 Q Okay. But a component of their payment  
18 certainly was a royalty on gold that was produced,  
19 true?

20 A That's my remembrance, yes.

21 Q Now, in that case did the surface owner  
22 get any payments from the company operating the gold  
23 mine?

24 A That, I don't remember.

25 Q But you don't -- you weren't aware of any

1 distinct payments that you recall today, true?

2 A I mean, I just don't remember. I mean,  
3 obviously, there's lots of different costs that were  
4 basically being expended. I don't remember exactly  
5 how the payments were being made to the surface  
6 owner.

7 Q Do you even remember whether they were  
8 receiving any payment?

9 A No, I honestly don't remember one way or  
10 the other. I don't think people would allow it to  
11 be done for free, so I mean, I would assume they are  
12 getting something.

13 Q Do you think it would have been less than  
14 what the mineral owner was receiving?

15 A In general, yes, because the mineral  
16 rights usually are more valuable than surface  
17 rights.

18 Q Right, because the mineral owner owns the  
19 gold, and the surface owner does not, correct?

20 A I mean, that's one dynamic, sure.

21 Q And you certainly don't disagree with that  
22 statement, right?

23 A No, I think that's a fair characterization  
24 of it.

25 Q All right. Now, let's talk about copper.

1 In the copper case you were involved in, do you have  
2 any understanding of how the mineral owner was paid  
3 in the copper case?

4 A You know, my remembrance is it was a  
5 similar situation, where there was some type of a  
6 set fee, but they got some other basis, whether it's  
7 royalty or some other type of -- kind of an earn-out  
8 payment.

9 Q But you did have an understanding that  
10 they got paid a royalty for the ongoing production  
11 of copper?

12 A There was definitely some type of add-on  
13 based on the production, yes.

14 Q Was that based upon actual sales of  
15 copper?

16 A I don't remember.

17 Q Well, certainly, the copper company  
18 wouldn't have the money to pay them for production  
19 if they didn't actually sell the copper, true?

20 A Well, I mean --

21 MR. ASHWORTH: Object to the form.

22 A -- that's not necessarily true. I mean,  
23 they could be holding onto it for speculation  
24 purposes, but in general, they want to sell it at  
25 some point so they get some kind of monetization of

1 their asset, yes.

2 Q (By Mr. Ray) And is that usually when the  
3 payment to the -- the royalty payment to the mineral  
4 owner is triggered?

5 A I don't remember there being a correlation  
6 like that, so I can't answer that one way or the  
7 other.

8 Q Do you remember the details of the royalty  
9 payments to the mineral owner at all?

10 A No.

11 Q So in the gold case, sir, what were you  
12 actually valuing there?

13 A Well, at that particular time it was after  
14 the mine had been shut down, and we were looking at  
15 the stock piles, is a term used in the industry, and  
16 looking at what potential value the site would have  
17 as is, as well as what potential value it would have  
18 if they reopened the mine.

19 Q So are the -- the stock piles, is that  
20 gold that has actually been extracted from the  
21 ground?

22 A Typically it's not the gold, especially  
23 when you talk about a gold mine, because gold has a  
24 very specific value that's high. So they typically  
25 have the gold already out as best they can.

1 There's, obviously, going to be traces still in the  
2 stock piles, but the stock piles typically are more  
3 valued for the other minerals that are there that  
4 have value in the marketplace.

5 Q And were you actually valuing those other  
6 minerals in the stock pile yourself?

7 A I mean, obviously, we have engineers, we  
8 have other people as part of the team, but, yes.

9 Q And did you value those based on the  
10 marketplace price for the minerals in the stock  
11 pile?

12 A As the revenue source, sure.

13 Q Is that sort of how you would value hard  
14 minerals like that, based upon what they could be  
15 sold for in the open market?

16 MR. ASHWORTH: Object to the form. Sorry,  
17 go ahead.

18 Q (By Mr. Ray) You can answer, sir.

19 MR. ASHWORTH: That was an objection,  
20 sorry.

21 Q (By Mr. Ray) He objected to the form,  
22 sir, but you can answer, subject to that.

23 A Yeah. So it's -- obviously, one dynamic  
24 of it is the revenue side of the equation, yes.

25 Q Were there other dynamics that you used in

1 valuing the hard minerals in the stock pile?

2 A Well, we, obviously, have all the same  
3 dynamics we talked about broadly with the mining  
4 before, but in this particular case, it's more of a  
5 concern about what the percentage of that stock pile  
6 is what type of ore.

7 Q Because different ores sell for different  
8 prices on the open market, correct?

9 A That's true.

10 Q So were you the one that actually  
11 performed the analysis of the different ores that  
12 were there, or did someone else do that?

13 A Well, we would do the financial  
14 calculations related to it, but, again, I'm not a  
15 geologist in that particular case or an engineer of  
16 some type where you may be doing the pure technical  
17 side of the equation.

18 Q There was someone else involved that did  
19 that, correct?

20 A That assisted me with that, yes.

21 Q And was this -- was the matter involving  
22 gold in actual litigation?

23 A I don't think the case had been filed yet,  
24 but I think there was an anticipation of that. I  
25 don't even know what the status is at this point.

1 It's an old case, but it's still technically pending  
2 is my understanding. We were looking at kind of the  
3 feasibility studies, is a term we would use in the  
4 industry, so we were looking at that aspect, and so  
5 I don't know if that was in litigation or not.

6 Q How about the copper case; was that in  
7 litigation?

8 A I don't believe that was in litigation  
9 either. Again, there would have been a potential  
10 for litigation going forward, but that -- I don't  
11 know if they settled, but that case stopped  
12 relatively quickly after we started.

13 Q Did you actually prepare a written work  
14 product in either of those cases?

15 A Yes.

16 Q Both?

17 A I don't believe we ever did a final  
18 product in the copper case, but in the gold case, we  
19 definitely did a report.

20 Q All right. Are there any other cases,  
21 besides the gold case and the copper case, that you  
22 can think of where you were valuing hard minerals  
23 yourself?

24 A I mean, I gave you a list of all sorts of  
25 different minerals where we were valuing the

1 minerals themselves, so I don't know what your  
2 question is there.

3 Q All right. Is there one case involving  
4 aggregate that you've already told us about?

5 A Okay. So before we talked about the gold  
6 and the copper case specific to surface versus  
7 mineral rights, that's where the breakoff point  
8 went. I talked about multiple different cases and  
9 various different ores, very different capacities  
10 related to minerals broadly. So all of those cases  
11 would be in answer to your question.

12 Q Okay. And in the case of aggregate, did  
13 you -- did you have any understanding of how those  
14 were valued in the open market?

15 A How those, what do you mean by those?

16 Q The aggregate, the aggregate at issue in  
17 that case.

18 A I have an understanding of that, yes.

19 Q And it's valued at what the market is  
20 willing to pay for it, correct?

21 A No. I mean, the company is valued based  
22 on its long-term performance. If you're talking  
23 about there's a value or a revenue to the specific  
24 aggregate itself, the answer is yes.

25 Q And that is what I'm referring to, sir.



1 You mentioned that case. Are there other cases in  
2 which you have valued the aggregate itself?

3 A Again, I don't know how you would value a  
4 mine without valuing the aggregate itself, so when  
5 you're valuing the overall operation, you have to do  
6 both of those dynamics. Is there a situation where  
7 we're valuing the minerals, absolutely. I mean, I  
8 do that every single mining case that we do.

9 Q All right. Have you done more than one  
10 case where you have valued aggregate?

11 A Yes. I've already told you a case where  
12 there's 26 different sites, so if that's -- I mean,  
13 that's already 26 different ones right there alone.

14 Q Right. And did you value any of that  
15 aggregate other than by looking to the market price?

16 A Well, again, the valuation of that  
17 particular operation is going to be different than  
18 just looking at the revenue source of the price. So  
19 if you're asking me if the revenue source of the  
20 price is one dynamic to the overall work, the answer  
21 is absolutely.

22 Q And I'm just focusing on the aggregate  
23 itself. I'm not talking about the business more  
24 generally, sir. I'm just talking about the  
25 aggregate at any particular site. Do you

1 understand?

2 A Sure.

3 Q And did you value any of that aggregate at  
4 any of those 26 locations, other than by looking to  
5 the market price for that aggregate?

6 A If you're talking about the minerals  
7 themselves, you have to get a revenue and a value of  
8 that revenue stream. That's only one dynamic to the  
9 overall work.

10 Q But as it relates to the aggregate itself,  
11 that's really the only dynamic for the aggregate  
12 itself, true?

13 A We'll just have to choose to disagree, so,  
14 no, I don't agree with that.

15 Q All right. What are the other components  
16 to valuing the aggregate itself?

17 A We've already covered that multiple times  
18 today. There's all sorts of other dynamics. You  
19 like to talk about the transportation as the first  
20 one, which, of course, is one of the dynamics that  
21 would be different from one site to another site.  
22 You have to look at the overall operations of that  
23 particular location.

24 Q All right. So you'd consider the market  
25 price and you'd consider transportation costs in

1 valuing the aggregate itself, true?

2 A Sure.

3 Q Is there anything else you would consider  
4 in valuing the aggregate itself?

5 A Okay. You have to be in an operational  
6 capacity to mine those minerals, so you have to look  
7 at your overall cost structure. We talked about the  
8 cost of the mining itself, we talked about the  
9 equipment necessary, we talked about the personnel  
10 necessary, we talked about all of those dynamics in  
11 detail previously.

12 Q All right. And so you have the production  
13 costs, correct?

14 A Yes.

15 Q And then you have the transportation  
16 costs, correct?

17 A Yes.

18 Q And then you have the market price, true?

19 A As three options, yes.

20 Q Is there anything else that you would take  
21 into account when you're valuing specific aggregate  
22 at a specific site?

23 A Yeah. I've already given you other  
24 examples.

25 MR. ASHWORTH: Object to the form.

1 A Of course there's other aspects.

2 Q (By Mr. Ray) All right. So let's just  
3 focus --

4 A You're asking the same question over and  
5 over and over again and expecting a different  
6 answer. You're not going to get a different answer.

7 Q No, sir. My question is, let's take a  
8 specific site in this project, all right? You've  
9 got 26. Let's pick one.

10 A Okay.

11 Q Okay?

12 A As I already told you, each one has a  
13 different dynamic. They're at different places of  
14 the life cycle.

15 Q I understand, but when you're valuing the  
16 aggregate at that site, you would take into account  
17 the market price, true?

18 A Yes.

19 Q And you would take into account the  
20 production costs, true?

21 A Yes.

22 Q And you would take into account the  
23 transportation costs, true?

24 A Yes.

25 Q Is there anything else for that specific

1 site that you would take into account in valuing the  
2 aggregate at that site and the aggregate at that  
3 site alone?

4 A Well, you're making a lot of assumptions  
5 there. I guess you're saying that production costs  
6 includes all the personnel, all the equipment, all  
7 those different things. So if that's what you're  
8 saying, those dynamics are taken into account, but,  
9 of course, the makeup of that specific aggregate  
10 would be important. So if you're saying the market  
11 price takes into account all the different aspects  
12 of the mineral itself, so you've already established  
13 what that mineral composition is, then I'll agree  
14 with you. But, again, it's not as simple as just  
15 those three factors. There's lot of dynamics  
16 related to those overall areas.

17 Q All right. So you identified the  
18 composition of the mineral, right, that's one thing  
19 that would have to be taken into account, true?

20 A Yes.

21 Q And the market sets different prices for  
22 different minerals; does it not?

23 A Again, as we talked about before, there's  
24 a negotiation aspect of it, so it's not like there's  
25 one price and only one price over a long period of

1 time. So I want to make sure that's clear. You're  
2 making it sound like if I have a couple of rocks in  
3 my pocket, I can take it to the site, and they're  
4 going to pay me X dollars, no matter what. That's  
5 not how it works. So you're trying to be very  
6 summarized for something that's much more  
7 complicated than that.

8 Q Right. But aggregate, you understand, in  
9 a given location, aggregate has pretty much a going  
10 rate, right?

11 A For that specific type of aggregate, sure.

12 Q Yes.

13 A At that particular moment in time.

14 Q And that's just whatever the market will  
15 support, true?

16 MR. ASHWORTH: Object to the form.

17 A That's for any product or business or  
18 service you have. If you're a lawyer and the market  
19 supports \$500 an hour, that's what the market  
20 supports. So at that point in time, \$500 an hour is  
21 what it supports.

22 Q (By Mr. Ray) All right. How about zinc,  
23 sir? Is the zinc valued in a similar way, or is it  
24 different?

25 A I don't understand your question, if I

1 value --

2 (Simultaneous speakers.)

3 Q (By Mr. Ray) Right. So you've done a  
4 case where you've valued zinc, have you not?

5 A I didn't say that. I said there's a zinc  
6 mine, yes.

7 Q And as a part of that engagement, did you  
8 actually value the zinc itself?

9 A I mean, you have to understand the value  
10 of the zinc to basically do the overall work of the  
11 valuation of the solvency related to that particular  
12 mine. Am I an engineer or a geologist, I've already  
13 said no. We'd have assistance from that standpoint  
14 to come up with the ultimate conclusion.

15 Q Is that what, in fact, occurred in the  
16 zinc case?

17 A As it occurs in most mining cases, for  
18 that matter.

19 Q Do you usually rely on engineers to  
20 actually conduct that valuation?

21 A No.

22 Q All right. So what role did the engineers  
23 play?

24 A They're part of the team to basically  
25 understand the quantity of the various different

1 mineral, whatever it might be. They're actually  
2 looking at the commodity prices, depending on if  
3 it's a commodity. We'll look at the market prices,  
4 as you like to term it, related to other types of  
5 minerals. So they're looking at all of that  
6 different information based on their knowledge. We  
7 will then take that information, we will look at the  
8 overall equation to make sure it fits the facts and  
9 circumstances of our case, make sure those reserves  
10 are accurate to come up with the ultimate valuation  
11 of that particular operation.

12 Q But is it the engineers that actually give  
13 you the information needed to value the actual zinc?

14 A No.

15 Q Who gives you that information?

16 A Again, they're not giving me anything.  
17 They're part of the team that's looking at the  
18 overall equation, but, again, generally, you would  
19 have a geologist that's looking at the mineral  
20 itself. So if we're talking about zinc, you're  
21 looking at a geologist that's basically assisting  
22 with that part of the project.

23 Q Was there a geologist on your team in this  
24 case, sir?

25 A In this case, being Osage --



1 Q Yes, sir.

2 A -- the matter that we're talking about  
3 here?

4 Q Yes, sir.

5 A I believe there was a geologist that was  
6 involved with this case, yes.

7 Q On your team?

8 A I don't know what you mean by my team. I  
9 mean, my team is the FTI team. If you're talking  
10 about some other lawyer team, I'm not part of any  
11 team. I'm an objective, independent expert, so I'm  
12 not sure what you're talking about there.

13 Q Was there a geologist involved at FTI?

14 A Not that I'm aware of, no.

15 Q Did you rely on a geologist in forming any  
16 of your opinions in this case?

17 A No.

18 Q Did you consider doing so?

19 A Sorry, you cut out on me there.

20 Q Did you consider doing so?

21 A I don't know if I would say consider. I  
22 mean, I was already aware of people that had that  
23 type of abilities or relied on others that had that  
24 type of abilities. As I've already mentioned, I've  
25 seen the other reports that have those types of

1 dynamics, the type of rock. That's not necessary  
2 for my opinion.

3 Q Are you rendering an opinion on the value  
4 of the minerals in this case?

5 MR. ASHWORTH: Object to the form.

6 A I would say I am not valuing the minerals  
7 themselves. I'm a damage expert valuing the mineral  
8 estate's rights and ownership and the damages  
9 related to it.

10 Q (By Mr. Ray) But you're not valuing the  
11 minerals themselves, correct?

12 A No --

13 MR. ASHWORTH: Object to the form.

14 A -- it's my understanding there are others  
15 that are doing that.

16 Q (By Mr. Ray) And I believe you've  
17 actually reviewed those reports, true?

18 A Yes.

19 Q Do you intend to offer any testimony on  
20 those, the subject matters of the reports of  
21 Mr. Pfahl and Mr. Freas?

22 A Well, I mean, it doesn't matter what my  
23 intention would be. I don't intend to do anything.  
24 I don't know what questions I'll be asked, so I  
25 can't answer that question.

1 Q Have you formed any opinions, as you sit  
2 here today, on the subject matters that those two  
3 gentlemen have rendered reports regarding?

4 A Well, I mean, obviously, I've read their  
5 reports. Some of them cross over into my report,  
6 especially if you're looking at Pfahl's type of  
7 information. So, again, I don't know what I'm going  
8 to be asked, so I would think there would be some  
9 crossover.

10 Q And what crossover do you think there  
11 would be?

12 A Again, you're asking me to speculate about  
13 what's in somebody else's mind about what they think  
14 the crossover is. I can't answer that.

15 Q Well, you said you thought there would be  
16 crossover, did you not?

17 A True, because my name specifically is  
18 mentioned in the Pfahl report, for example, so, of  
19 course, there's crossover.

20 Q All right. Do you have any criticisms or  
21 responses to anything in Mr. Pfahl's report?

22 A Sure.

23 Q And tell us what those might be, sir.

24 A You'd have to pull out the report. We'd  
25 have to go line by line if you want to go over all

1 the criticisms.

2 Q Do you have any that generally come to  
3 your mind, as we sit here right now?

4 A I would rather have the report in front of  
5 me to give you all of them. I don't want to start  
6 giving you a partial laundry list.

7 Q Can you think of one example as you sit  
8 here right now, without even looking at the report  
9 in front of you?

10 A Well, I think broadly he misses the point.  
11 The point here in this particular situation is  
12 negotiation of a lease. It doesn't have anything to  
13 do in my mind about what that particular mineral may  
14 be worth right there at that particular moment in  
15 time. We're talking about damages related to this  
16 case and what the mineral right owners should  
17 receive as damages. That's what we're talking about  
18 in this case. So he just totally misses the point.

19 Q Damages for what?

20 A For the failure to get a lease for the  
21 mining activities that the Tenth Circuit determined  
22 was going on.

23 MR. RAY: All right. Do we have up  
24 Mr. Hazel's report, Exhibit 18? Is that the exhibit  
25 that we have here?

1 THE VIDEOGRAPHER: It is, yes.

2 Q (By Mr. Ray) All right. Let's go back to  
3 the beginning of it. All right, sir. So you talked  
4 about the mining activities defined by the Tenth  
5 Circuit. Is that correct?

6 A I mean, I don't see it on that particular  
7 page, but we have -- it was in the report, yes.

8 Q All right. Well, it says here on the --  
9 if we see the third line of the second paragraph, do  
10 you see you have a defined term, mineral  
11 development; do you see that there, sir?

12 A I'm sorry, are you on page 1?

13 Q Yeah, I'm on page 1, yes, sir.

14 A Are you talking about the first -- the  
15 third or the first full paragraph?

16 Q The second paragraph -- third line, second  
17 paragraph.

18 A Okay. I apologize. I thought you said  
19 something else earlier. I apologize. I'm not sure  
20 how that relates to the question you asked. Can you  
21 ask the question again?

22 Q My question was simply, you have a defined  
23 term, mineral development, on that line. It  
24 actually -- the term itself spills over to the  
25 fourth line; do you see that?

1           A     I see what you're saying.  Okay, yes,  
2     that's fine, yes.

3           Q     All right.  And you've defined that to be  
4     "extraction, sorting, crushing and the use of  
5     minerals."  Correct?

6           A     That's my defined term of mineral  
7     development, correct.

8           Q     And is that the activity that required a  
9     lease?

10          A     I don't remember --

11               MR. ASHWORTH:  Object to the form.

12          A     I don't remember exactly what the Tenth  
13     Circuit said.  We would have to look at their  
14     language.  That would be more appropriate than what  
15     my language is.

16               (Exhibit 19 marked for identification.)

17          Q     (By Mr. Ray)  All right.  Well, let's do  
18     that.  Could we pull up -- it is Exhibit 19.  Let's  
19     look -- let's go ahead and go to the third page.  
20     And in the first full sentence there, sir, we see  
21     very similar language, true?

22          A     True.

23          Q     And they say that that process, being  
24     "extraction, sorting, crushing, and use of  
25     minerals," that constituted mineral development,

1 just like you define it, right?

2 A It's similar language, yes.

3 Q And it says, "thereby requiring a  
4 federally approved lease." Do you see that?

5 A Yes.

6 Q Was there anything else that required a  
7 lease?

8 MR. ASHWORTH: Object to the form.

9 A I mean, I'm sure there's other things that  
10 would require a lease, but if we're talking about  
11 specific to this case --

12 Q (By Mr. Ray) Yes.

13 A -- specific to the Tenth Circuit opinion,  
14 I think you've summarized it well.

15 Q All right. Now -- all right, sir. If  
16 we -- now, you've looked at some of the Code of  
17 Federal Regulations in this case, have you not?

18 A I have seen those referenced as well as,  
19 you know, in writing in various places, yes.

20 (Exhibit 21 marked for identification.)

21 Q (By Mr. Ray) All right. Let's pull up  
22 Exhibit 21, if we could. And if we take a look at  
23 part (a), you actually quote part of this Regulation  
24 211.1(a) in your report, do you not, sir?

25 A I think there might have been a footnote

1 about that or maybe in the prose. That's probably  
2 true.

3 Q All right. And you reference this in  
4 regard to the quote about "maximizing Indian mineral  
5 owner's best economic interests"; do you recall  
6 that?

7 A I guess you'll have to show it to me or  
8 let me look at the report to see exactly what you're  
9 talking about. I don't think I would phrase it that  
10 way, no.

11 Q All right. Let's go back to Exhibit 18  
12 then, if we could. And if we could take a look at  
13 -- we'll start on the bottom of page 6, and do you  
14 see, sir, right there where it says, "The federal  
15 regulations contemplated," and it's talking about  
16 the Tenth Circuit opinion. Do you see that  
17 language, sir?

18 A Yes.

19 Q All right. It says, to "protect Indian  
20 mineral resources and maximize the Indians' best  
21 economic interests." Do you see that?

22 A I do.

23 Q And that same language was in 211.1(a),  
24 was it not?

25 MR. ASHWORTH: Object to the form.



1 (Simultaneous speakers)

2 A -- 211.(a) (sic) but, again, we're not  
3 footnoting this particular regulation in that  
4 particular there; we're quoting the Tenth Circuit  
5 order, so I'm not sure what you're getting at.

6 Q (By Mr. Ray) All right. Let's pull back  
7 up the Tenth Circuit's opinion. I believe that's  
8 Exhibit 19. You're quoting -- before -- you're  
9 quoting page 21 of the Tenth Circuit's opinion in  
10 that portion of your report, are you not?

11 A Again, I don't have the report with me, so  
12 I can't answer that question, but I'll believe you.

13 Q Okay. Well, let's take a look on page 21.  
14 All right, sir. Do you see where it says -- the  
15 Tenth Circuit's opinion here says, "The regulations  
16 at issue here are designed to protect Indian mineral  
17 resources and 'maximize Indians' best economic  
18 interests.'" Do you see that?

19 A I do.

20 Q And the Tenth Circuit Court of Appeals is,  
21 in fact, quoting 25 CFR, Section 211.1. Do you see  
22 that?

23 A I do.

24 Q All right. So can we go back to Exhibit  
25 21? And we see there, sir, in subsection (a), the

1 full sentence from which that's quoted. It  
2 starts -- do you see where it says, "These  
3 regulations are intended to ensure that Indian  
4 mineral owners desiring to have their resources  
5 developed are assured that they will be developed in  
6 a manner that," as they said, "maximizes their best  
7 economic interests." Do you see that?

8 A Honestly, I can't see it because the  
9 screen is cut off a little bit, but I think you read  
10 it properly.

11 Q All right. Do you also have an  
12 understanding that part 214 of these regulations  
13 actually specifically applies in Osage County? You  
14 looked at some of those, did you not?

15 A You'll have to refresh my memory, but that  
16 sounds right.

17 (Exhibit 20 marked for identification.)

18 Q (By Mr. Ray) All right. Well, let's take  
19 a look at Exhibit Number 20, and if we could, let's  
20 go to page 32. And do you see there, sir, where  
21 "Leases, among other things, must be on forms  
22 prepared by the department, and the superintendent  
23 of the Osage Indian School, Pawhuska, Oklahoma, will  
24 furnish prospective lessees with such forms at the  
25 cost of \$1 per set." Do you see that?

1 MR. ASHWORTH: Object to the form. Ryan,  
2 I can't see where you're -- what you're referring  
3 to. Could you enlarge it so I can see where you're  
4 reading from?

5 MR. RAY: Yeah, it's from the first  
6 sentence there.

7 A I mean, I think you read it properly, if  
8 that's what you're asking, yes.

9 Q (By Mr. Ray) All right. And one of the  
10 things there is a form N, which would be a lease,  
11 except for lead and zinc, right?

12 A True.

13 Q Are you aware of any forms prepared by the  
14 Department of the Interior that would have terms  
15 like those you are proposing?

16 A I have no idea what you're talking about  
17 there.

18 Q Have you seen a form lease that would have  
19 payment terms like what you've proposed in your  
20 report?

21 A Are you talking about our damage  
22 calculation in our report?

23 Q Yes, sir, that's basically based on the  
24 terms of the surface leases that the surface owners  
25 got in this case, right?

1 A True.

2 Q Have you seen forms prepared by the  
3 Department of the Interior that have terms like  
4 that?

5 MR. ASHWORTH: Object to the form.

6 A I don't know why they would prepare those,  
7 first of all, so I don't understand your question,  
8 but I guess, no, I haven't seen something specific  
9 like that.

10 (Exhibit 23 marked for identification.)

11 Q (By Mr. Ray) All right. Let's take a  
12 look at Exhibit 23. Have you ever seen this  
13 document, sir?

14 A This one does look familiar. I definitely  
15 have some similar to this, but I can't remember if  
16 it was Candy Creek or not.

17 Q All right. This would appear to be a  
18 lease that was in effect in 2013 and 2014, true?

19 A A negotiated lease between the two parties  
20 at that time period, yes.

21 Q Right. It's on a form prepared by the  
22 Department of the Interior, is it not?

23 A That's what it appears.

24 Q All right. And it has -- in paragraph  
25 2(a) it actually has a royalty rate, correct?

1 A It does.

2 Q And that's 51 cents per ton for all  
3 limestone and Dolomite received; is it not?

4 A It technically says removed, but, yes.

5 Q Removed -- "removed from the premises" is  
6 what it says, right?

7 A Yes.

8 Q That's what triggers payment of the  
9 royalty under this document?

10 A We would have to look at the whole  
11 document, but that's what this line says, yes.

12 Q All right. Well, please take a look, and  
13 tell us if you -- I believe it's a two-page  
14 document, sir. If you need to look at the entire  
15 thing to tell us if you see any other payment terms  
16 that are set out, please take a look and let us know  
17 what they are. And I apologize. It's actually four  
18 pages, maybe it's five.

19 A I'm not sure I really understand the  
20 question. Are you trying to say what is the trigger  
21 event for a payment --

22 Q Yes, sir.

23 A Is that what your question is?

24 Q I'm trying to ask you if there's anything  
25 other than the removal of limestone or Dolomite?

1 A That would cause a payment?

2 Q Yes, sir.

3 A Okay. Can you go to the next page? Okay.  
4 Keep going. Keep going. So I think your question  
5 is, is the removal of the limestone and Dolomite the  
6 triggering for the royalty? I agree with you.

7 Q Nothing else that triggers a payment in  
8 this form prepared by the Department of Interior?

9 A I think that's fair.

10 Q All right. Let's go back to Exhibit 20,  
11 and we'll take a look at page 12. Now, do you see  
12 subsection (d), sir?

13 A You said B as in boy or D as in dog? Oh,  
14 D? Okay.

15 Q D as in, yeah, Delta.

16 A Okay.

17 Q All right. Are you -- there was no gold,  
18 silver, copper, lead, zinc, coal or asphaltum at  
19 issue in this case, true?

20 A Correct.

21 Q All right. So this provision actually  
22 requires a royalty rate for those substances for  
23 "10 percent of the value at the nearest shipping  
24 point of all ores, metals or minerals marketed,"  
25 correct?

1 MR. ASHWORTH: Object to the form.

2 A So it requires a royalty rate in a  
3 negotiated lease where both parties are active in  
4 negotiations; is that what you're asking?

5 Q (By Mr. Ray) Well, it specifies that  
6 royalties -- if you look at the first line, sir, the  
7 very first line of the regulation, it says,  
8 "Royalties will be required as follows"; do you see  
9 that?

10 A That's what the standard says, yes.

11 Q And then subsection (d) is specific to the  
12 substances that are at issue in this case; is it  
13 not?

14 A I would say it's specific, but it  
15 basically is part of those because it's not one of  
16 the other things, yes.

17 Q Okay. It requires "a royalty of  
18 10 percent of the value at the nearest shipping  
19 point of all ores, metals or minerals marketed."  
20 Correct?

21 A If the Indian Nation wants to do a lease,  
22 that's what they're required to do, correct.

23 Q There isn't anything in this regulation --  
24 and please review it if you need to, sir -- that  
25 would contemplate any other royalty than what is

1 required in subsection (d) for these materials?

2 A You'll have to do that one again. Can you  
3 say that one again?

4 Q Is there anything else in this regulation  
5 that would contemplate any different kind of royalty  
6 for the substances at issue in this case, other than  
7 that in subsection (d)?

8 A Well, sure. I mean, again, the Indian  
9 Nation didn't want the development at all, so we're  
10 talking about leases that the Nation wants. Well,  
11 they don't want this development, so if you're  
12 trying to say that you have to charge us royalty in  
13 every single possible situation, that doesn't make  
14 sense to me.

15 Q My question, sir, is specific to  
16 subsection 210 of the Code of Federal Regulations,  
17 and my question is whether anything in this  
18 regulation contemplates a royalty for the substances  
19 at issue here, other than that set forth in  
20 subsection (d)?

21 MR. ASHWORTH: Object to the form.

22 A Well, first of all, this is 214.10(d), not  
23 what you said, but second of all, if there's a  
24 negotiated lease for these, is this royalty  
25 required, the answer is yes.



1 Q (By Mr. Ray) Is there anything -- any  
2 language in 2 -- Section 214.10 that limits its  
3 application to negotiated situations only? Can you  
4 point to any language in the regulation itself that  
5 supports that, sir?

6 MR. ASHWORTH: Object to the form.

7 A You're asking -- it doesn't support the  
8 opposite either. You're basically saying under  
9 every single possible scenario, no matter what the  
10 scenario might be, they can only charge this amount.  
11 That doesn't make sense to me. If a judge decides  
12 that, that's for the judge to decide.

13 Q (By Mr. Ray) But there's nothing in this  
14 regulation that you could point to that would  
15 contemplate a different royalty rate, true?

16 MR. ASHWORTH: Object to the form.

17 A If there's different facts and  
18 circumstances that this royalty rate doesn't apply  
19 to, of course, this doesn't apply to that.

20 Q (By Mr. Ray) Is there any language in  
21 this regulation that limits its application in any  
22 way?

23 MR. ASHWORTH: Object to the form.

24 A We'd have to look at the overall statute  
25 to see if that answer would be apparent, but, again,

1 how could it ever contemplate all of the different  
2 facts and circumstances that could come up?

3 Q (By Mr. Ray) Well, this is a regulation  
4 that's adopted by the Department of the Interior; is  
5 it not?

6 A I don't have any problem with the  
7 regulation. It is what it is.

8 Q Is there any regulation, sir, that you saw  
9 in your review that contemplated different lease  
10 terms, other than this one?

11 A I didn't see any regulation that applied  
12 to different lease terms one way or the other, so  
13 you're asking me to prove a negative, which doesn't  
14 exist.

15 Q Well, this regulation certainly  
16 contemplates lease terms for royalty, does it not?

17 A If both parties want to negotiate a lease,  
18 that is true.

19 Q And there's nothing in here that limits  
20 its application to only negotiated leases in --

21 A Nothing that limits it to other types of  
22 negotiations, either.

23 (Exhibit 24 marked for identification.)

24 Q (By Mr. Ray) Let's pull up Exhibit Number  
25 24, if we could. All right, sir. This is a series

1 of documents that were produced to us regarding  
2 compensation made to you and your firm and related  
3 communications. Have you seen these documents  
4 before?

5 A I mean, I don't remember seeing them  
6 recently, but, of course, it's got my name on it, so  
7 I definitely would have remembered it at the time.  
8 This is back in February of 2020.

9 Q All right. Let's take a look at the  
10 second page. There's an email from you to a number  
11 of people, a number of attorneys in this case. Do  
12 you see that, sir?

13 A Yes.

14 Q All right. The second sentence of the  
15 email says, "I stand ready to assist you and am  
16 highly qualified in all of the various areas  
17 needed." Did you see that?

18 A Yes.

19 Q What did you understand the various areas  
20 needed to be at this time?

21 A Well, I think there was broadly the  
22 renewable energy aspect, there was broadly the  
23 mineral aspect, there was broadly the damages  
24 expert. It's all the different types of work that  
25 needed to be done at that point.

1 Q And are you highly qualified in all of  
2 those areas?

3 A Yes.

4 Q All right. As it relates to wind, I  
5 believe I understood you earlier that you've been  
6 involved in one case involving wind energy that  
7 involved construction overruns, correct?

8 A No, that's not what I said.

9 Q All right. What other wind energy  
10 projects have you been involved in?

11 A Again, as we talked about previously,  
12 there was the one case we talked about in detail. I  
13 believe there was other cases where there was wind  
14 farms as part of the development, but was not the  
15 focal aspect of that particular case.

16 Q You certainly didn't analyze anything  
17 about mineral leases in those cases specific to wind  
18 farms, true?

19 A I don't remember that being a dynamic in  
20 those cases, correct.

21 Q And you've never actually done that at all  
22 before this case, true?

23 A Sure.

24 Q All right, sir. Let's take a look at the  
25 third page of Exhibit Number 24. Is this a budget

1 that you prepared?

2 A I mean, I didn't personally prepare it,  
3 but I'm responsible for it, yes.

4 Q Do you know who did personally prepare it?

5 A I probably did at the time, but I don't  
6 remember who specifically did the first version of  
7 this.

8 Q But you were ultimately responsible for  
9 all of this work; is that -- do I understand you  
10 correctly there?

11 A Yes.

12 Q All right. One of the line items that you  
13 identify here, sir, is analysis, market and industry  
14 research. That's under paragraph B. Do you see  
15 that?

16 A B as in boy?

17 Q Yes, sir.

18 A Yes, I see that.

19 Q Did that work, in fact, occur?

20 A I mean, broadly, yes. Obviously, the  
21 categories are pretty generic, and that's something  
22 that we've done in every single case, but there was  
23 definitely some industry research, definitely some  
24 market research, definitely some analysis.

25 Q All right. How about the industry

1 research; can you describe for us what kind of  
2 industry research was done?

3 A Trying to think of an example, just bear  
4 with me a second here. I guess a good example would  
5 be that we did some research related to the life  
6 cycle of a wind turbine.

7 Q Okay. Any other examples that you can  
8 think of?

9 A Off the top of my head, I think we did  
10 some analysis related to wind projects related to  
11 their cost structure. I think we did some research  
12 related to the discount rates, to their rates of  
13 return, to their revenue sources, to their  
14 agreements with electrical providers, those types of  
15 things.

16 Q And did your research reveal any other  
17 instance in which mineral owners were paid the same  
18 as surface owners in a wind energy project?

19 A I don't think the research spoke to that,  
20 no.

21 Q Are you aware of that occurring anywhere  
22 else in the United States of America?

23 A Again, that's not what we're doing here,  
24 so I'm not sure why you're saying that, but I'm not  
25 aware of that specific dynamic happening.

1 Q And also, for example, your experience in  
2 coal mines, certainly, the mineral owners and the  
3 surface owners are not paid on the exact same terms  
4 in a coal mine, are they?

5 A They're generally not paid on the exact  
6 same terms. The mineral right owners usually get  
7 paid more.

8 Q All right, sir. You're familiar with your  
9 report and how it came to be, correct?

10 A That's fair.

11 Q All right. Who drafted the report? Did  
12 you draft the report, or did someone else draft the  
13 report?

14 A Well, I'm ultimately responsible for it,  
15 so at the end of the day I drafted it, because I'm  
16 responsible for every word. If you're talking  
17 about, you know, the format originally or something  
18 else, you'll have to ask those questions.

19 Q So who actually put the words on the page,  
20 and I'll limit that right now, sir, to the first 23  
21 pages of the report. I know it has appendices, but  
22 the actual sort of narrative text, if you will, is  
23 23 pages. Who --

24 MR. ASHWORTH: Object to the form.

25 Q (By Mr. Ray) Who wrote those words?

1 MR. ASHWORTH: Same.

2 A Again, I wrote them, I'm responsible for  
3 every single word. Did I type every single word,  
4 probably not, because I probably didn't change every  
5 single word, when I would do my red lining and my  
6 work within a particular case, but I'm ultimately  
7 responsible for every single word in that report.

8 Q Did you dictate this to someone else?

9 A No.

10 Q So someone else actually went through the  
11 process of putting words on the page other than you,  
12 correct?

13 A Again, I'll disagree with that. I mean,  
14 again, I'm responsible for every word. If somebody  
15 else typed up the initial version of it, I agree  
16 with you.

17 Q How many different versions of this were  
18 there?

19 A I'm not sure of any other versions, but  
20 there's a version that's on our server on our  
21 subdirectory at any point in time.

22 Q All right. Sir, let's take a look, if we  
23 can, at page 18 of Exhibit Number 24. And this  
24 appears to be a cover letter with an enclosed  
25 invoice for the period from July 1 through



1 September 6th, do you see that, sir, of 2020?

2 A I do.

3 Q And was this the period of time in which  
4 the majority of the work on your expert report was  
5 done?

6 A I mean, that would make sense just because  
7 of the date of the actual report. As you saw on  
8 other things, we were doing things back in February  
9 of 2020, even as early as January of 2020, so it  
10 depends on what you mean by majority, but that was  
11 definitely the big push during this time frame.

12 Q Well, let's take a look at page 19, the  
13 next page after this. It appears your firm billed  
14 \$179,976 during this period of time, true?

15 A That's what it appears, yes.

16 Q That's certainly well more than 50 percent  
17 of the total amount you've billed, correct?

18 A I mean, you're using some qualifiers in  
19 there. Well more than 50 percent, I don't think  
20 that's necessarily the case, no.

21 Q How much have you billed in total; do you  
22 know?

23 A I don't know off the top of my head.

24 Q Is it more or less than \$300,000?

25 A At this moment in time?

1 Q Yes, sir.

2 A I would think it's more.

3 Q Do you know how much more?

4 A No.

5 Q Is it more or less than \$400,000?

6 A Again, I don't know one way or the other.

7 I haven't looked at the billings in, you know,  
8 forever, honestly, but I haven't looked at it  
9 recently.

10 Q Do you know if there were any bills, other  
11 than this bill prior, where you billed for actually  
12 drafting the report?

13 A I can't even see this bill where it says,  
14 drafting the report, so we would have to look at all  
15 the bills to determine that.

16 Q All right. Well, let's look at the -- the  
17 first bill you submitted, starts on page 5. Let's  
18 go there, if we could. Let's actually take a look  
19 at page 7.

20 A Okay.

21 Q Would this be -- you were engaged in  
22 January of 2020, correct?

23 A Correct.

24 Q So would this be the first bill?

25 A I believe so, yes.

1 Q All right. Do we see anything there other  
2 than discussions, either internally or with lawyers,  
3 or reviewing documents or case materials, anything  
4 else that happened there?

5 A No. I think that's a good summary of it.

6 Q All right. Then if we look at page 8,  
7 then we have the next bill. That's for March 13th  
8 through April 24th, true?

9 A Yes.

10 Q All right. And then we look at -- page 11  
11 has the detail.

12 A Okay.

13 Q And it appears you were reviewing  
14 documents then, true?

15 A Yes.

16 Q And Mr. Campbell was reviewing case  
17 materials, right?

18 A Correct.

19 Q The only other thing -- did you suspend  
20 work in April of 2020?

21 A Yes.

22 Q And why did that happen?

23 MR. ASHWORTH: Object to the form.

24 A I mean, I don't know exactly, because,  
25 again, I'm not a lawyer, but it's my understanding

1 that there was some type of ruling where we were  
2 transitioning from the U.S. Attorney's Office to the  
3 Pipestem Law Firm, but I don't -- again, I don't  
4 know the specifics. There was some transition that  
5 was occurring there, that then subsequently was not  
6 an issue, and so we basically went back with the  
7 U.S. Attorney's Office.

8 Q (By Mr. Ray) Have you ever billed --

9 MR. ASHWORTH: Ryan, we're almost --

10 MR. RAY: Yeah.

11 MR. ASHWORTH: No, you go ahead. I was  
12 going to say that we're almost at lunch time, if  
13 this is a good stopping point.

14 MR. RAY: You know, if you could give me  
15 just a few more minutes, maybe we can conclude with  
16 this exhibit.

17 Are you okay to go, sir, for just a few  
18 more minutes?

19 THE WITNESS: I mean, I'm fine, if you  
20 want to go through the invoices. It's whatever you  
21 want to do, either way.

22 Q (By Mr. Ray) All right, sir. And if we  
23 look then, the next bill is for the period from  
24 April 25th through June 30th. That's on page 12.

25 MR. RAY: If you could pull that up for

1 the witness, please?

2 Q (By Mr. Ray) Do you see that?

3 A I do.

4 Q All right. And it would appear, if we  
5 look on page 15, that, again, you're just reviewing  
6 documents, and it looks like you may have had a  
7 couple of different communications with some  
8 attorneys, true?

9 A That's fair.

10 Q And it looks like the other people, that  
11 were working under your supervision, were also doing  
12 document review, correspondence and maybe one entry  
13 with analysis; is that fair?

14 A I mean, I think you're being too literal  
15 there. I mean, obviously, as you're reviewing case  
16 documents, you're, you know, making a mental note or  
17 some type of note to basically understand what the  
18 aspects are there for the future use, just like  
19 analysis would be, typically, some type of financial  
20 manipulation.

21 Q Right. But there's not a billing entry  
22 here that indicates anyone was actually drafting the  
23 report; true?

24 A I'm not sure why that matters, obviously.  
25 I mean, you have to take all of your knowledge and

1 information as part of that drafting, so I don't  
2 know why you're separating them.

3 Q But is there a billing entry that  
4 indicates someone was drafting the report during  
5 this period of time?

6 A There is no entry that says, drafting  
7 report, if that's what you're asking.

8 Q All right, sir. Let's take a look at page  
9 18, and this is the bill for the period of time from  
10 July 1 through September 6th. Is that true?

11 A Yes.

12 Q All right. Now, let's take a look at  
13 pages 21 and 22. On page 21 we -- so the total  
14 amount of time you billed during this period of time  
15 was 11 and a half hours, correct?

16 A Yes.

17 Q And you billed three hours drafting the  
18 report on September 5th of 2020, correct?

19 A Yes.

20 Q Any other of your entries that indicate  
21 that you were drafting the report during that  
22 period?

23 A Again, I'm drafting the report the whole  
24 time, because I'm giving direction to the staff of  
25 what to do, so -- but there are other entries, like

1 report work on 9/6, obviously analysis is typically  
2 the review of the schedules themselves, so that's  
3 part of the report, but, again, reviewing case  
4 materials is informative so I can do the report. So  
5 it's all part of the overall process.

6 Q And I believe you billed about an hour and  
7 a half reviewing case materials during this period  
8 of time, correct?

9 A True.

10 Q Now, Mr. Campbell, he billed almost five  
11 times as much as you during the period, correct?

12 A He billed 49.9 hours, I billed 11.5, yes.  
13 (Reporter clarification.)

14 Q (By Mr. Ray) You said 11 and a half that  
15 you billed, correct, sir?

16 A During this period, correct.

17 Q Sorry. The court reporter just didn't  
18 hear your answer. I apologize.

19 A I understand.

20 Q And is it Ms. Gagyor, am I pronouncing  
21 that correctly? You correct me if I'm wrong.

22 A It's -- I mean, it's Hungarian, and if --  
23 you don't pronounce the second G, so it's Gagyor.

24 Q Gagyor. Very well. Ms. Gagyor, she  
25 billed 129.6 hours, correct?

1 A You'll have to go to the next page, if you  
2 wouldn't mind. Yes, that is correct.

3 Q And she has a number of entries, some of  
4 them are on the prior page, if you need to see them,  
5 sir, about -- that indicate she spent time drafting  
6 the expert report, true?

7 A True.

8 Q Certainly far more than you, correct?

9 A Well, just choose to disagree with that  
10 statement. I mean, Melinda is one of my  
11 lieutenants, and so she probably knows what I'm  
12 thinking before I think it.

13 Q But in terms of the bill, she certainly  
14 has significantly more entries that objectively  
15 indicate she was drafting the report than you do?

16 MR. ASHWORTH: Object to the form.

17 A I mean, okay, so what? I mean, I don't  
18 know what you're getting at there, but that's fine.  
19 The hours are what they are.

20 Q (By Mr. Ray) Right. That's a true  
21 statement, is it not?

22 A No.

23 MR. ASHWORTH: Object to the form.

24 A Because I told you what I considered  
25 drafting the report, so the answer is no, I don't



1 agree with your statement.

2 Q (By Mr. Ray) Well, just numerically and  
3 time-wise, she has more time billed drafting the  
4 report than you do, correct?

5 A Okay. So what?

6 Q That's --

7 A I would expect that.

8 Q Right. Was she the principal author of  
9 the report?

10 A Of course not. I've already explained  
11 that to you. It's my report. I'm the one that  
12 signed it.

13 Q Even though you only billed 11 and a half  
14 hours working on it in the period in which it was  
15 prepared?

16 A I mean, is that a question or --

17 MR. ASHWORTH: Object to the form.

18 A -- are you just arguing with me?

19 Q (By Mr. Ray) No, but that's a true  
20 statement; is it not?

21 A You totally cut out there. You'll have to  
22 say it again.

23 Q That's a true statement. You only billed  
24 11 and a half hours during the period of time in  
25 which the report was principally prepared, correct?

1 MR. ASHWORTH: Object to the form.

2 A Again, I don't agree it was -- I don't  
3 agree with it's the time when it was principally  
4 prepared. I don't agree with that that's the time  
5 that's all we're doing the drafting of the report,  
6 so I disagree with your whole thought process.

7 Q (By Mr. Ray) All right. Over what period  
8 of time was the report drafted?

9 A Again, you're trying to peg a time when  
10 particular words are put on a page as being drafted.  
11 That's not the draft of the report. We're drafting  
12 a report in the way we think about the overall  
13 engagement since day one, so you can't -- if you  
14 don't review case materials in previous time frames,  
15 you can't draft a report at any point in time. So I  
16 don't know what you're trying to get at. I'm  
17 ultimately responsible for the report.

18 Q Well, certainly, Mr. Campbell and Ms.  
19 Gagyor reviewed substantially more case materials  
20 than you did, did they not?

21 A No.

22 Q Did you review everything that they did?

23 A Yes. Did I review it in the same detail  
24 they did, probably not.

25 Q So did you personally read the entirety of

1 every document we looked at earlier on Appendix A?

2 A Wow, I mean, read. I definitely reviewed  
3 all of the documents in my files. Did I read every  
4 single word when I went through it, probably not.

5 Q Did Mr. Campbell or Ms. Gagyor?

6 A Do what?

7 Q Read the entirety of those documents?

8 A Well, I would assume so, because that's  
9 part of their particular part of the project, so I  
10 would assume so. I'm not them. I can't answer for  
11 them.

12 Q But you're responsible for their work, are  
13 you not?

14 A Yes, as I've said many times.

15 Q And did you ask them to review every  
16 document that you have in your possession?

17 A I don't need to ask them. They know how  
18 this works. They know what they have to do, so they  
19 have to look at all documents that we would have in  
20 our files.

21 Q And all of those documents came solely  
22 from the U.S. Attorney's Office, correct?

23 A Again, no, as we talked about previously,  
24 there are other files and other documents that we  
25 received ourselves.

1 Q Did you ask the defendants for any  
2 documents?

3 A Did I ask the defendants for any  
4 documents?

5 Q Yes.

6 A I asked for defendants documents through  
7 counsel, but, no, I did not have any direct line of  
8 communication with defendants.

9 Q Even though you claim to be an objective,  
10 independent expert, right?

11 MR. ASHWORTH: Object to the form.

12 A Again, are you being argumentative  
13 intentionally, or do you really mean that as a  
14 question?

15 Q (By Mr. Ray) No, I really mean that as a  
16 question.

17 A So, again, I can request documents from  
18 overall parties. I don't have a direct link to the  
19 defendants. I wish I did, but, again, I am helping  
20 the trier of fact in the determination of the case.  
21 I'm not an advocate. I have no skin in the game.  
22 I'm objective and independent.

23 Q Have you sought to open a line of  
24 communication with the defendants to get documents  
25 or the defendants' view of the case?

1           A       Indirectly, yes, because I asked for  
2 documents that would be in the defendants'  
3 possession and actually received some of those  
4 documents that were in defendants' possession. So I  
5 didn't need to go to them directly, even if I wanted  
6 to or could, because I was already doing that  
7 indirectly.

8           Q       Is there anything that prevents you from  
9 doing that, sir?

10          A       I've been doing this a long time, and I've  
11 never had the opportunity, even when I've  
12 specifically requested to have that opportunity. So  
13 if that's an open situation, I'm going to have to be  
14 more adamant about it in the future. I've never had  
15 that opportunity in the past.

16          Q       And you've never asked for it in this  
17 case, correct?

18          A       Well, again --

19                   MR. ASHWORTH: Object to the form.

20          A       -- we did, because we asked for the  
21 information related to certain dynamics related to  
22 defendants. Do we need to get that directly from  
23 them, or can we get that through you? Typically,  
24 counsel says, we'll get it for you, we'll get it  
25 produced for you. That's typically how the

1 discussion goes.

2 Q (By Mr. Ray) And that's counsel for the  
3 party that's paying your fees, correct?

4 A Again, I guess I don't know how that works  
5 from the standpoint of the party that's paying my  
6 fees. I mean, again, we're working for the Osage  
7 Nation. It's my understanding the U.S. Attorney's  
8 Office is paying our fee, so I don't know what you  
9 mean by party in that question.

10 Q Well, certainly, the defendants are not  
11 paying any of your fees in this case, correct?

12 MR. ASHWORTH: Object to the form.

13 A I don't know one way or the other. Maybe  
14 at some point they will have to.

15 Q (By Mr. Ray) Right, but these invoices  
16 that we have looked at in Exhibit Number 24, have  
17 those all been paid?

18 A I believe so, yes.

19 Q And they've all been paid by the U.S.  
20 Attorney's Office, correct?

21 A I don't know that one way or the other.  
22 I'm assuming that's the case, but I haven't looked  
23 at the cash received.

24 Q And you were engaged by the U.S.  
25 Attorney's Office, right?

1 A I would have to look back at the  
2 engagement letter, but I believe that's correct.

3 Q You certainly weren't appointed by the  
4 court, correct?

5 A I don't -- sorry, what were you just  
6 saying?

7 Q I said, you weren't appointed by the  
8 court?

9 A Not that I'm aware of.

10 Q And you weren't engaged by the defendants?

11 A No.

12 MR. ASHWORTH: Ryan, is this a good time  
13 for the lunch break?

14 MR. RAY: Sure. We can go ahead and take  
15 a lunch break.

16 THE WITNESS: How long do you want to  
17 take?

18 MR. RAY: Is 30 minutes okay for you, sir,  
19 or do you need more time? You just let us know.

20 THE WITNESS: It's really the court  
21 reporter that really should answer that question.  
22 She's doing -- I assume it's a she -- that's doing  
23 the hard work, so maybe she should answer that.

24 THE REPORTER: I'm good with whatever.

25 MR. RAY: She said she's good with

1 whatever. Let's say 30, 40 minutes we'll be back;  
2 fair?

3 THE WITNESS: Well, you're talking to a  
4 CPA here, so you've got to be precise. Thirty or  
5 40?

6 MR. ASHWORTH: Either five past the hour  
7 or ten past the hour?

8 MR. RAY: Let's do ten past the hour; how  
9 about that? Is that fair?

10 MR. ASHWORTH: That's fine. Thank you.

11 THE VIDEOGRAPHER: We're off the record at  
12 12:34 p.m.

13 (A recess was had.)

14 THE VIDEOGRAPHER: We're back on the  
15 record at 1:14 p.m.

16 MR. ASHWORTH: I want to note before we  
17 went on the record -- sorry, went off the record,  
18 there was questioning about Exhibit 24, which was  
19 produced in February of this year. What I'd say is,  
20 this is something that kind of fell out of my note,  
21 as well as Cathy's, that part of the exhibit that  
22 was produced in February of this year was done  
23 inadvertently without redactions, as it relates to  
24 bills for staff of Mr. Hazel. That information  
25 would not be discoverable under Federal Rule



1 26(b)4(D). Of course, you can continue your  
2 questions, but following this deposition, we will  
3 reproduce those with the appropriate redactions.

4 MR. RAY: We will just note for the record  
5 that we do not agree with that analysis, and we can  
6 take it up in accordance with the rules at a later  
7 time.

8 MR. ASHWORTH: Sure.

9 MR. RAY: Does that complete, sir, your  
10 statement?

11 MR. ASHWORTH: Yes.

12 Q (By Mr. Ray) All right. Mr. Hazel, we  
13 looked earlier at your definition of mineral  
14 development from your report, which was based on the  
15 Tenth Circuit opinion. Do you recall that?

16 A That's not how I phrased it before. It's  
17 a definition of mineral development based on our  
18 expert report, which copies the Tenth Circuit's  
19 opinion, yes.

20 Q All right. Now, if we could pull back up  
21 your report, and we'll look first at page 2. That's  
22 Exhibit 18, I believe.

23 THE VIDEOGRAPHER: I'm sorry, what page?

24 MR. RAY: Page 2.

25 THE VIDEOGRAPHER: Page 2?

1 MR. RAY: Two, yes.

2 Q (By Mr. Ray) All right. Sir, in the  
3 third line at the bottom, do you see where you  
4 state, "By September 2014 defendants began the  
5 excavation work"? Do you see that?

6 A Yes.

7 Q And do you understand that that is the  
8 same work you referred to previously?

9 A I have no idea what you're asking.

10 Q I'm asking about the extraction, sorting,  
11 crushing and use of minerals.

12 A Are you asking if this sentence is exactly  
13 the same as that?

14 Q I'm asking if that is when that work  
15 began?

16 A I don't think I've tried to parse that  
17 out, so I don't know what you're asking.

18 Q Well, what did you mean here when you  
19 said, "By September 2014 defendants began the  
20 excavation work"? What were you referring to?

21 A It comes right out of the complaint. It's  
22 basically just background for the timing of certain  
23 events.

24 Q And so did the work you've described as  
25 mineral development occur -- begin prior to

1 September of 2014?

2 A I don't think I've looked into that, to be  
3 able to answer that question.

4 Q You certainly don't have any other  
5 evidence to suggest that it did?

6 A Again, I don't think I looked into that,  
7 so I can't answer that question.

8 Q Is this an assumption that underlies your  
9 report, that the excavation work began in September  
10 of 2014?

11 A No. First of all, it's not an assumption.  
12 It's just background information from the complaint.

13 Q Did you assume everything in the first  
14 amended complaint was true?

15 A Of course not.

16 Q Did you conduct any independent research  
17 to verify allegations in the first amended  
18 complaint?

19 A Well, we have various different documents  
20 that talk about time frames when payments were made,  
21 we have documents related to when permits were  
22 required and received, so we have documents to kind  
23 of understand the timeline, but, again, this is just  
24 background information to understand the sequencing  
25 of events.

1 Q You understand the term, mining, as set  
2 forth in the Tenth Circuit opinion, correct?

3 A Do I understand it? Is that the question  
4 you asked?

5 Q Yes, sir.

6 A I mean, I think their definition is what  
7 it is. I think it's a reasonable definition.

8 Q And so if you look on the next page, sir,  
9 in the second paragraph under summary of legal  
10 actions between the parties, do you see that  
11 paragraph?

12 A I do.

13 Q All right. And it says there that the  
14 defendants had completed the excavation work in late  
15 November 2014; do you see that?

16 A Yes.

17 Q Do you have any evidence that indicates  
18 that the mining activity found by the Tenth Circuit  
19 occurred at any time after the end of November of  
20 2014?

21 A I don't think I looked into that one way  
22 or the other, so I don't know.

23 Q But you can't say that that activity is  
24 occurring, correct?

25 A Again, we have documents that talk about

1 the various different time frames where the surface  
2 owners were being paid during the different phases  
3 of the development. We have other documents, like I  
4 talked about, related to the sequencing and to the  
5 permitting, but I haven't looked into that specific  
6 dynamic to be able to answer your question.

7 Q Well, we looked earlier, sir, at the Tenth  
8 Circuit opinion, and we established that it was the  
9 extraction, sorting, crushing and use of minerals  
10 that required a lease, right?

11 A I don't think it said exactly those words,  
12 but something similar.

13 Q And is that activity occurring today?

14 A I mean, I don't know. I don't believe so,  
15 as part of the wind farm, because it's something  
16 that was basically done as part of the construction  
17 activities.

18 Q And so you would expect when the  
19 construction ended, that that activity ended, true?

20 A I think that's fair, yes.

21 Q Let's take a look, sir, at your report,  
22 page 7, and I want to direct your attention to the  
23 first full sentence of that paragraph. It starts,  
24 "Based on documents provided." Do you see that?

25 A On page 7?

1 Q Yes, sir, page 7 of 23, the first full  
2 sentence on the page after the words, "emphasis  
3 added"?

4 A Sorry. I was looking at something else.  
5 I apologize. Yes, I see that now.

6 Q Now, this sentence really is the core  
7 premise of your damage model, is it not?

8 A No, I don't know why it's a core premises.  
9 It's how the calculation was done.

10 Q Right. Well, every other calculation that  
11 comes after is dependent upon this statement, is it  
12 not?

13 MR. ASHWORTH: Object to the form.

14 A I mean, I don't look at it that way, but  
15 if you want to look at it that way, that's fine.

16 Q (By Mr. Ray) Well, how do you look at it?

17 A It's a statement of basically looking at  
18 the proxy of the surface owners and that the mineral  
19 owners would have the same type of damages, same  
20 types of rights, if not more.

21 Q And that proxy underlies all of your  
22 calculations, does it not?

23 A No, because I think different dynamics  
24 would come into play, where a judge could take  
25 certain types of damages and not others, based on

1 the specific facts and circumstances of the case.

2 Q All of the -- so you have six income  
3 streams that you identify, correct?

4 A That sounds right.

5 Q And all of them come from surface leases,  
6 true?

7 A I mean, first of all, they're not  
8 technically income streams, but they're -- we're  
9 using the surface leases as a proxy for what a  
10 reasonable negotiation would have been at a minimum  
11 basis for the mineral state owners.

12 Q Well, you're the one that refers to them  
13 as income streams. Take a look at the third  
14 paragraph under summary of expert opinion. Income  
15 streams is your word, correct?

16 A Sure.

17 Q All right.

18 A Used in a different context, so...

19 Q Well, those are -- that is what makes up  
20 your damage calculation, is it not, these six income  
21 streams, and then you've reduced them to present  
22 value and applied prejudgment interest?

23 A No.

24 Q All right. What makes up your damage  
25 calculation then other than that?

1 A Well, first of all, there's historical  
2 amounts that would not have a present value, so it's  
3 looking at the overall amounts that would be  
4 received by the six surface owners.

5 Q Over the entire life of the project?

6 A Well, not technically over the entire life  
7 of the project, over the initial period. It does  
8 not include the renewal time frame.

9 Q Your calculations do not include the  
10 renewal time frame?

11 A Correct.

12 Q Because it wouldn't be appropriate to  
13 include those, because we don't know if the renewal  
14 is going to happen or not, right?

15 A I would disagree with that. We were just  
16 being conservative by just using the additional time  
17 frame. Technically, you would add the probability  
18 of the lease being extended, which is pretty likely,  
19 but we're talking about out in the future, so it  
20 would be present valued back.

21 Q And how do you know it is likely that the  
22 lease will be extended?

23 A Based on any renewable project, they want  
24 the project as long as possible. Now, obviously,  
25 things can change in the industry at that time,



1 which is why you have to present value it back at a  
2 risk adjusted rate.

3 Q But as you sit here right now, you simply  
4 don't know one way or another whether the renewal  
5 option will or will not be exercised, correct?

6 A Of course I don't know, because it's  
7 something that's going to happen in the future, so I  
8 can't say they're definitely going to do it or  
9 they're definitely not going to do it.

10 Q Let's take a look, sir, at page 10 of your  
11 report, if we could. And I want to direct your  
12 attention to the first sentence of the final  
13 paragraph. It starts, "It is therefore evident"; do  
14 you see that, sir?

15 A Yes.

16 Q All right. So it says here, "It is  
17 evident that during the construction period Osage  
18 Wind engaged in mining of the mineral estate,  
19 consistent with the Tenth Circuit Court of Appeals  
20 order." Is that right?

21 A Yes.

22 Q Was there mining at any other time?

23 A I don't know what you mean by --

24 MR. ASHWORTH: Object to the form.

25 (Simultaneous speakers.)

1 A -- during the construction period; is that  
2 what you are getting at?

3 Q (By Mr. Ray) I'm asking you if there was  
4 mining at any other time other than the construction  
5 period?

6 MR. ASHWORTH: Object to the form.

7 A I would have to look at the time periods  
8 involved, to see what time periods they were  
9 actually looking at for that period, double-check  
10 that, but I'm not sure that's relevant in my  
11 calculation.

12 Q (By Mr. Ray) My question is whether you  
13 have any evidence that it occurred at any time other  
14 than the construction periods you've defined?

15 A I haven't looked into that, so I don't  
16 know the answer to that. I would say there probably  
17 was some type of mining activities related to  
18 sampling or whatever, but again, I don't -- I  
19 haven't looked into that.

20 Q Do you have any evidence that there was  
21 mining type activities in relation to sampling?

22 A I don't know -- do you mean by evidence,  
23 do you mean a document, or what do you mean by  
24 evidence?

25 Q How do you define evidence?

1 A I'm asking you how you define it. To me  
2 it means any type of information, verbal, nonverbal,  
3 depositions, it might be, you know, a document, it  
4 could be any type of thing that could basically be  
5 evidence, but, again, if you're using the term  
6 evidence from a legal context, I'm not a lawyer, so  
7 I'm not going to make a legal conclusion.

8 Q Let's use it from the definition you just  
9 gave. Have you reviewed any type of information in  
10 the categories you just identified that indicates  
11 that mining is occurring anytime other than the  
12 construction period?

13 A Again, I've already answered that question  
14 multiple times. I haven't looked into that. I  
15 would have to look into that to see if that dynamic  
16 matters.

17 Q But you know enough to say that it is  
18 evident that it occurred during the construction  
19 period, correct?

20 A True.

21 Q And you just don't know anything to say  
22 it's evident that it occurred any other time?

23 A Yeah, I haven't looked into it. It's not  
24 whether I know or not. I just haven't looked into  
25 it one way or the other.

1 Q Do you believe that the mining activity  
2 ceased when the construction period ended?

3 A I mean, if we're talking about  
4 generically, that would make sense. If we're  
5 talking about specifics of this case as a defined  
6 term of what they called the construction period in  
7 the lease, I would have to look into that to see  
8 exactly what time frame that was, to make sure there  
9 was no other mining activities occurring.

10 Q Well, let's look at -- you've defined --  
11 if we look at the first period -- or the first  
12 paragraph under number 4, do you see that, sir?

13 A Yes.

14 Q You've defined the -- construction period  
15 is a defined term, in your report, is it not?

16 A It is.

17 Q And it's for the period commencing on the  
18 lease effective dates, right?

19 A I don't think that's technically true.  
20 The leases were signed at different times, so there  
21 may be slightly different time frames there.

22 Q Well, you define it in footnote 50 as  
23 being December 2011; do you not?

24 A December of 2011?

25 Q Yes, sir.

1 A That would make sense. Let me see what  
2 you're looking at. Okay. That's fair. I agree  
3 with you.

4 Q Okay. And then you said that that period  
5 -- the construction period ends on the commercial  
6 operations date. Do you see that back in the text?

7 A That would also make sense, yes.

8 Q All right. And in paragraph -- in  
9 footnote 51, you define that as being June 5, 2015,  
10 correct?

11 A That makes sense, yes.

12 Q Has anything you've looked at, heard or  
13 seen indicate to you that mining occurred after  
14 June 5, 2015?

15 A I can't think of anything where I saw  
16 something, there was specifically mining occurring  
17 after that date.

18 Q All right. Let's pull back up the Tenth  
19 Circuit's opinion, if we can, Exhibit 19. All  
20 right. Let's take a look at page 3, if we could.

21 A Okay.

22 Q Do you see in the last sentence, sir, of  
23 the first paragraph under legal background, do you  
24 see where it says, "The act also ensured that  
25 property owners could use the land for farming,

1 grazing or any other purpose not otherwise  
2 prohibited by the Osage Act"? Do you see that?

3 A I see that.

4 Q And did you review this portion of the  
5 opinion in forming your opinions?

6 A I mean, I looked at the whole opinion, so,  
7 yes.

8 Q So did you understand that property owners  
9 had the right to use their land for anything not  
10 otherwise prohibited?

11 A I mean, I don't -- I didn't make a legal  
12 conclusion like that, but that's what that sentence  
13 says.

14 Q And have you seen anything anywhere that  
15 says that the property owners could not use their  
16 property for a wind energy project, if they so  
17 chose?

18 A You're talking about the surface owners,  
19 or you're talking about the mineral owners?

20 Q The surface owners.

21 A Have I seen anything that says the surface  
22 owners couldn't do whatever they want? I guess I  
23 haven't really seen anything one way or the other,  
24 but, obviously, they're the surface owners, so they  
25 can't go into the subsurface, because that's not

1 something they own.

2 Q You believe they can't go into the  
3 subsurface at all?

4 A I didn't say that. Again, it's a legal  
5 conclusion. We covered that earlier.

6 Q Let's take a look, sir, at page 23 of the  
7 opinion. Do you see the last paragraph there, it  
8 starts, "We agree with Osage Wind"?

9 A Yes.

10 Q All right. So you see it says, "We agree  
11 with Osage Wind, however, that merely encountering  
12 or incidentally disrupting minerals would not  
13 trigger Section 211.3's definition," right? Do you  
14 see that?

15 A Yes.

16 Q So if you were merely encountering or  
17 incidentally disrupting mineral materials, the  
18 surface owner does not need the mineral owner's  
19 consent for that according to this, true?

20 A That seems pretty far --

21 MR. ASHWORTH: Object to the form.

22 A -- reaching, but, you know, again, it says  
23 what it says.

24 Q (By Mr. Ray) Right. It says, "There is  
25 simply no sense in which the word mineral

1 development means only the removal of dirt without  
2 some further manipulation, commercialization or  
3 offsite relocation of it." True?

4 A That's what the order says, yeah.

5 Q So there's nothing in this opinion that  
6 you can point to that says that Osage Wind needed  
7 the permission of the mineral holder to dig a hole,  
8 right?

9 MR. ASHWORTH: Object to the form.

10 Q (By Mr. Ray) You can answer.

11 A You know, I haven't tried to parse out  
12 whether the digging or the sorting or the crushing,  
13 or whatever dynamic is specific there. The opinion  
14 is what it is, so I haven't tried to segregate it  
15 out that way.

16 Q Well, the opinion clearly says that the  
17 simple removal of dirt does not constitute mining,  
18 does it not?

19 A I'm not sure I'd say clearly. That's what  
20 the words say, but, again, you have to look at the  
21 overall context of the document.

22 Q Well, and we looked earlier on page 3,  
23 sir, and we looked that the Court defined mineral  
24 development as extracting, sorting, crushing and use  
25 of minerals as a part of excavation work, right?



1 A That's what it says.

2 Q And that's the same definition that you  
3 applied, right?

4 MR. ASHWORTH: Object to the form.

5 A Very similar, yes.

6 Q (By Mr. Ray) And it was that activity  
7 that required a lease, according to this same  
8 sentence, right?

9 MR. ASHWORTH: Object to the form.

10 A I think it's more than that just one  
11 sentence, but this is a summary of why they required  
12 a federally approved lease.

13 Q (By Mr. Ray) And did the mineral owner  
14 have the right to say no to the project if that  
15 operation didn't occur?

16 MR. ASHWORTH: Ryan, I'm sorry, you cut  
17 out there. Could you re-ask that?

18 A You did cut out. I think I know what you  
19 said, but just say it again, if you wouldn't mind.

20 Q (By Mr. Ray) Yeah. Did the mineral owner  
21 have the right to say no to the project if that  
22 operation, that we just looked at the Tenth Circuit  
23 described, did not occur?

24 A So that operation being the --

25 Q Extracting, sorting --

1 (Simultaneous speakers.)

2 A -- extraction, sorting, crushing --

3 Q (By Mr. Ray) -- sorting, crushing and  
4 use of --

5 A -- and use of materials prior to  
6 acquisition work costing mineral development; is  
7 that what you mean?

8 Q Yes, sir.

9 A Again, I'm not going to make a legal  
10 conclusion like that. I don't know.

11 Q Well, we certainly know from the opinion  
12 that if they only removed dirt, they would not have  
13 needed -- Osage Wind would not have needed consent  
14 of the mineral holder, correct?

15 MR. ASHWORTH: Object to the form.

16 A Again, I think you're, you know, applying  
17 it liberally, but again, I'm not disagreeing with  
18 you. The opinion says what it says. I'm not trying  
19 to interpret or provide a legal conclusion of what  
20 the order means.

21 Q (By Mr. Ray) Is there anything that you  
22 saw when you reviewed this opinion, sir, that said,  
23 more generally, that the consent of the mineral  
24 holder was required to operate a wind energy  
25 facility?

1           A       I think that's pretty obvious. I mean, it  
2       says that Osage Wind failed to obtain the lease that  
3       they needed, so if they have to obtain a lease, then  
4       the mineral owners have those rights.

5           Q       And why did they need the lease?

6                   MR. ASHWORTH: Object to the form.

7           A       Again, I'm not a lawyer. I'm not going to  
8       make a legal conclusion like that.

9           Q       (By Mr. Ray) Do you have any idea what  
10      kind of activity required a lease?

11          A       Well --

12                  MR. ASHWORTH: Objection to form.

13          A       -- it's pretty obvious that the mining  
14      that they did in this particular situation required  
15      a lease, so, again, I'm just reading the opinion,  
16      what the order says.

17          Q       (By Mr. Ray) And do you know, sir,  
18      whether the material that was extracted, sorted,  
19      crushed and used was elsewhere available?

20          A       Do I know if it's available elsewhere?

21          Q       Right.

22          A       I would say it probably likely is. It  
23      probably won't be exactly the same composition, but  
24      it would probably be very close.

25                  (Exhibit 26 marked for identification.)

1 Q (By Mr. Ray) All right. Let's take a  
2 look at Exhibit 26, if we could. Have you seen this  
3 document before?

4 A It does look familiar. I don't remember  
5 what context I saw this in, but it does look  
6 familiar.

7 Q And did you understand that IEA Renewable  
8 Energy was the contractor that constructed this  
9 project?

10 A I actually thought it was a different name  
11 that was spelled out, but I'm not trying to disagree  
12 with you. They could be the same entity.

13 Q Well, whoever they are, it clearly appears  
14 that they purchased some aggregate from Dewey,  
15 Oklahoma, correct?

16 A That's what it appears, yes.

17 Q This was ordered on December 16th, 2014,  
18 right?

19 A Yes.

20 Q That's during the construction period;  
21 yes?

22 A Sounds right, yes.

23 Q All right. And it says, if we look in the  
24 bottom sort of left hand there, it says, "Delivered  
25 to Osage Wind project," right?

1 A It does.

2 Q So it certainly appears that aggregate  
3 was, in fact, purchased for this project from  
4 another source; yes?

5 A That's what it appears.

6 (Exhibit 27 marked for identification.)

7 Q (By Mr. Ray) Let's take a look at Exhibit  
8 27, if we could. Have you seen this document  
9 before, sir?

10 A This one does not look familiar, but,  
11 again, it's a similar purchase order to the previous  
12 one.

13 Q And it certainly indicates a number of  
14 hard mineral type materials were purchased for the  
15 Osage Wind farm; do you see that?

16 A Yeah. I mean, I guess we should be  
17 careful about using the word, hard, in that  
18 particular context, but there are various different  
19 materials purchased here, yes.

20 Q Which one of them do you not define as  
21 hard, if any?

22 A Well, I mean, again, I'm not trying to be,  
23 you know, argumentative, but most people would  
24 consider clay and fill, they wouldn't necessarily  
25 consider that a hard mineral.

1 Q You wouldn't consider it a hard mineral,  
2 right?

3 A I wouldn't personally, but again, I'm not  
4 trying to be argumentative. If somebody wants to  
5 consider it a hard mineral, that's fine. I'm just  
6 being precise.

7 Q Just from your perspective, you personally  
8 wouldn't, and you think a lot of other people  
9 wouldn't either, right?

10 A Sure.

11 Q Are there any materials that were sorted,  
12 crushed and used that aren't identified on either  
13 Exhibits 26 or 27 that we just looked at?

14 A I don't know. I would have to  
15 cross-reference the materials. I don't know.

16 Q Do you know what materials were subject to  
17 being sorted, crushed and used?

18 A Yeah, there's various different places  
19 where it talks about that; I just didn't focus on  
20 that.

21 Q If we look at pages 23 and 24 of the Tenth  
22 Circuit's opinion, that's Exhibit Number 19, the  
23 court there in the last sentence that starts on page  
24 23 and continues to 24 refers to that as rocks. Do  
25 you see that? It says, "sorted the rocks, crushed

1 the rocks into smaller pieces and then exploited the  
2 crushed rocks as structural support"; do you see  
3 that?

4 A That's what it says, yes.

5 Q Do you think that would be a reference to  
6 hard minerals?

7 MR. ASHWORTH: Object to the form.

8 A I mean, again, you don't generally have to  
9 crush sand, for example; you don't generally have to  
10 crush clay. So, again, I don't know what they  
11 meant. You would have to ask the Court what they  
12 meant by the sentence.

13 Q (By Mr. Ray) If we look, sir, at page 6.

14 A Sorry, you cut out on me. Page 6?

15 Q I'm sorry. Page 6, let's look at page 6  
16 of the opinion. And do you see there's a sentence  
17 that starts, "This process," at the very bottom?  
18 It's the last sentence on the page. Do you see  
19 that, sir?

20 A Yes.

21 Q All right. Tell me when you've read all  
22 of that sentence.

23 A Looks like it continues on, but I've read  
24 that.

25 Q Yes. Okay. Let's continue on to page 7.

1 A Okay.

2 Q All right. So the only rock we see  
3 identified here is limestone and Dolomite, right?

4 A It's not technically what it says. It  
5 says, including limestone and Dolomite.

6 Q Are you aware of any other types of rock  
7 that were used in this process?

8 A Again, there's information for exactly  
9 what the composition of the rocks are. I was just  
10 answering your question previously, because it says,  
11 including, so there must be something else involved  
12 there; otherwise, they wouldn't say it that way.

13 Q And what information is there that  
14 establishes exactly what the rock was?

15 A I saw various different samples that were  
16 taken that were basically the -- kind of like the  
17 borings that -- is what I'm calling the borings,  
18 that basically had the composition of rock at  
19 different -- different levels.

20 Q Where did you see that?

21 A I've seen it a couple of different places.  
22 I think the expert reports have it.

23 Q Is that the reports of Mr. Pfahl and  
24 Mr. Freas you're referring to?

25 A That would make sense, just based on what



1 they were talking about.

2 Q Is there anywhere else that you think you  
3 saw that information?

4 A I thought I saw it related to a mapping of  
5 the area and the various different rock structures  
6 in the area that were relatively contiguous and  
7 similar, but I would have to look back on that to  
8 try to figure out where I saw that.

9 Q Would the best source, from your  
10 perspective, be to look at the reports of Mr. Pfahl  
11 and Mr. Freas?

12 A I don't know about best source. I think  
13 you should look at the best source of exactly what's  
14 there. So again, I'm not trying to parse out their  
15 words from that dynamic. I'm not a geologist.

16 Q Would they be better qualified than you to  
17 talk about exactly what rock is there?

18 A Sure.

19 Q All right. Let's go back to your report,  
20 sir, if we could, which is Exhibit Number 18. There  
21 is a paragraph a little more than halfway down. It  
22 starts, "Based on the above descriptions of the  
23 defendants' excavation activities"; do you see that?

24 A At the start of the paragraph?

25 Q Yeah, it's on page 6. I'm not sure that

1 we're on the right page.

2 A Oh, yeah, you're on page 10 still, sorry.  
3 "Based on the above descriptions," that's the one  
4 you talked about?

5 Q Yes, sir.

6 A I see that.

7 Q How is it the case, sir, that the mineral  
8 estate is at least as integral as the surface estate  
9 to the construction of the wind farm?

10 A Yes.

11 Q Explain how that is so.

12 A Well, I mean, we've already talked about  
13 that many times today, that their damages are  
14 probably at least what the surface estate -- I  
15 believe you even agreed with me a couple of times  
16 that the mineral estate is typically more valuable.  
17 The bottom line here is, if you can't anchor down  
18 that wind turbine, it's worthless.

19 Q So is that -- so is it the anchoring of it  
20 in the subsurface that is the basis of your  
21 conclusion there?

22 A No. I'm just giving you an example of  
23 something that has to have all the different aspects  
24 of the equation. You can't just set it on top of  
25 the surface.

1 Q Is there anything, sir, that you saw in  
2 the Tenth Circuit's opinion that says a lease was  
3 needed to place the foundations in the subsurface?

4 A No, I don't think they got that specific  
5 that I remember.

6 Q In fact, the only time when they got  
7 specific is when they talked about extraction,  
8 sorting, crushing and use, true?

9 MR. ASHWORTH: Object to the form.

10 A No. I mean, they got specific on various  
11 different dynamics, but they got specific in that  
12 particular situation, and again, that sentence, you  
13 always take it out of there, but Osage Wind failed  
14 to get the lease.

15 Q (By Mr. Ray) Right, but it was the  
16 extraction, sorting, crushing and use that thereby  
17 required a federally approved lease, right?

18 MR. ASHWORTH: Object to the form.

19 Q (By Mr. Ray) That's what it says; yes?

20 A Yeah, I'm not making a legal conclusion  
21 there, but that's what the opinion says.

22 Q There's nowhere in the opinion where it  
23 says to operate a wind energy facility in Osage  
24 County, a lease is required, there's nothing like  
25 that that you saw, is there?

1 MR. ASHWORTH: Object to the form.

2 A Well, I mean, I don't quite understand the  
3 question. I mean, if they have to have a lease for  
4 the mineral estate to be able to build the farm, of  
5 course they have to have that lease to operate the  
6 farm, because, otherwise, they can't build a farm.  
7 So I don't quite understand your question.

8 Q (By Mr. Ray) Well, the lease -- or the  
9 opinion says that the lease is required because of  
10 extraction, sorting, crushing and use of minerals;  
11 does it not?

12 A I think that's a fair summary --

13 MR. ASHWORTH: Object to form.

14 A -- on it, yes.

15 Q (By Mr. Ray) Is there any other reason  
16 anywhere in the opinion that the court says a lease  
17 is required?

18 A No. I think you've summarized it, what  
19 the lease is required to have that permit or that  
20 lease to basically do that particular work.

21 Q All right. Let's go back to the Tenth  
22 Circuit's opinion. That's Exhibit 19, and if we can  
23 look at page 5. Now, we see there, sir, in the  
24 first sentence under factual background, do you see  
25 that?

1 A Yes.

2 Q All right. "That Osage Wind lease surface  
3 rights for 8400 acres"; do you see that?

4 A Yes.

5 Q But we see a little further down, "The  
6 structures only occupied about 1.5 percent of the  
7 total acreage of leased surface land"; do you see  
8 that?

9 A Yes.

10 Q So on the other 98.5 percent, the mineral  
11 owners can still engage in mineral development,  
12 true?

13 MR. ASHWORTH: Object to the form.

14 A There's been various different testimony  
15 that that's not the exact case, based on what is  
16 actually available and unavailable, but again, in  
17 theory, could they do mining in other locations, the  
18 answer is -- (inaudible)

19 Q The answer is yes? Sorry, you cut out on  
20 us.

21 A You have to take the whole answer  
22 together. You have to take the whole answer  
23 together, not just parse it out that way.

24 Q No. We literally didn't hear you say the  
25 last word, sir.

1           A       The answer is yes under those caveats  
2 related to that's not the exact percentage based on  
3 other people's discussions of this particular area.

4           Q       What other testimony in this case have you  
5 reviewed, sir?

6           A       Let's see, I have the report, first of  
7 all, but I think the deposition of Mr. Pfahl is the  
8 only deposition I've -- I have in my possession.

9           Q       And did you read Mr. Pfahl's deposition in  
10 its entirety?

11          A       I did.

12          Q       So even, sir, if in your opinion the view  
13 -- the surface is a little bit more than  
14 1.5 percent, you still would agree that there are a  
15 lot of surface area within these 8400 acres that --  
16 on which mineral development could occur?

17          A       I mean, it's honestly not relevant to me,  
18 but I agree with your statement.

19          Q       But did you know that the surface owners  
20 have given up the exclusive right for wind energy on  
21 the entire 8400 acres?

22          A       I don't quite understand that question.  
23 Would you say it one more time?

24          Q       Yes. Have the surface owners leased all  
25 of these acres to Osage Wind?

1 MR. ASHWORTH: Object to the form.

2 A I'd have to look at the language, but  
3 again, that gets to be, you know, somewhat of a  
4 legal conclusion, too, about what rights they have  
5 given up, but I would have to look at the lease to  
6 try to determine that.

7 Q (By Mr. Ray) Have you, in fact, looked at  
8 the leases in this case?

9 A I have.

10 (Exhibit 28 marked for identification.)

11 Q (By Mr. Ray) All right. Let's pull one  
12 of them up, Exhibit 28, if we could. You used the  
13 lease of Carolyn Cane Snively and James Snively as  
14 your exemplar, right?

15 A I mean, again, I wouldn't look at it that  
16 way. We found them to be very similar in all  
17 capacities, so we just used one as a starting point.

18 Q All right. But they all were  
19 substantively similar based on you and your staff's  
20 review, correct?

21 A Correct.

22 Q All right. So let's take a look then,  
23 sir, if we could, at paragraph 2 on page 2.

24 A So the development period rent; is that  
25 where you're at?

1 Q No, sir. I'm on paragraph number 2 at the  
2 bottom of page 2.

3 A Oh, I see. All right.

4 Q It says, "purpose of lease." Right?

5 A Got it.

6 Q It says, "Company shall have the exclusive  
7 right to use the property solely for energy  
8 purposes." Do you see that?

9 A I think that's different than what we  
10 talked about before, but it's saying the company  
11 shall have the exclusive right to use the property  
12 solely, so they can only use it for wind energy  
13 pro- -- purposes.

14 Q Right, and someone else couldn't come in  
15 and build another wind farm on this acreage?

16 A You cut out again. Did you say someone  
17 else --

18 Q I said, someone else couldn't come in and  
19 build a wind farm on this acreage?

20 MR. ASHWORTH: Object to the form.

21 A Again, I think that's a legal conclusion  
22 first of all, but I don't -- I don't know if that's  
23 true or not.

24 Q (By Mr. Ray) All right. Well, it says  
25 here that they have -- the company has the exclusive



1 right, right? And you've seen that before, haven't  
2 you?

3 A I don't think I necessarily -- again, I  
4 shouldn't be making legal conclusions like this or  
5 interpretations. I don't read that that way, but if  
6 a judge or another lawyer says that's the  
7 interpretation of that language, that's fine. I'm  
8 not interpreting it one way or the other.

9 Q So it is your conclusion, sir, that the  
10 mineral owners should receive a lease on these --  
11 the terms, the same as Exhibit 28; is that correct?

12 MR. ASHWORTH: Object to the form.

13 A I mean, no, that's not what my report  
14 says. I mean, first of all, they may not want it at  
15 all, so there should be no wind farm there. So  
16 that's the first option. So, basically, now that  
17 there is a wind farm there, do they have to tear it  
18 up? Let somebody else decide that. But at this  
19 point they have to have approval, being Osage Wind  
20 has to have the approval of the mineral estate  
21 owners, so why would they accept anything less than  
22 what the surface owners got? It doesn't make any  
23 sense. They would want at least that amount, if not  
24 more, because, again, as you've agreed with me a  
25 couple of different times, the mineral estate is

1 actually more valuable than the surface estate.

2 Q (By Mr. Ray) Well, that was in the  
3 context of a coal mine, right?

4 A I don't think it matters. I mean, again,  
5 there's a lot more area that goes down than goes up.

6 Q Well, but there is not ongoing production  
7 of minerals by Osage Wind at this time, is there?

8 A So what?

9 MR. ASHWORTH: Objection to form.

10 A What does it matter? I mean, again, they  
11 had the opportunity to have to get a lease,  
12 according to the opinion. So the Osage Nation has  
13 to have some say into whether or not there is a  
14 lease at all, but at the point where there is some  
15 type of a lease, again, why would they negotiate  
16 something less than what the surface owners got?

17 Q (By Mr. Ray) My question, sir, though,  
18 actually related to coal mines, right? So coal --  
19 in a coal mine, the mineral owner is paid more than  
20 the surface owner, true?

21 A Again, you're making -- we're making  
22 generalities here. In general, the mineral estate  
23 is more valuable than the surface estate.

24 Q In the context of a coal mine, right?  
25 That's -- my question is specific to that.

1           A       I'm trying to think of any mine that that  
2 would not be the case, so there's probably some  
3 exception to that general rule. That's a general  
4 rule.

5           Q       But Osage Wind isn't out there operating a  
6 mine today, right? You don't have any evidence of  
7 that?

8           A       So what? They were required to get a  
9 lease, so they have to negotiate the lease with the  
10 Osage Nation.

11          Q       My question, though, sir, is, do you have  
12 any evidence that Osage Wind is operating a mine  
13 today?

14          A       Again, in my thought process, they never  
15 operated a mine, because they weren't in the mining  
16 activity business, but they did mining on the  
17 estate. Because of the work that they did, they are  
18 required to get a lease.

19          Q       And has that work occurred at any time  
20 after the construction period ended?

21          A       Again, so -- I don't care. So what? It  
22 doesn't matter. They're required to get a lease for  
23 the mining activities they did. There's nothing in  
24 the circuit case that says, okay, at some point in  
25 time it stops. The wind farm is there, so they're

1 being damaged the whole time frame when the wind  
2 farm is there. That's the damages component.

3 MR. RAY: Move to strike as nonresponsive.

4 Q (By Mr. Ray) My question again, sir, is,  
5 do you have any evidence that mining occurred after  
6 the construction period ended?

7 A Again, you've asked me that question  
8 multiple times. I've told you that I don't have any  
9 specific information, because I haven't looked into  
10 that. I already told you a bunch of times it's not  
11 relevant to me. That's not the calculation we made.

12 Q Are you aware, sir, of any other instance  
13 in which a mineral owner is paid other than for the  
14 production of minerals from the mineral estate?

15 MR. ASHWORTH: Object to the form.

16 A I mean, there are situations, especially  
17 in the oil and gas, where people are paid for other  
18 than the extraction itself, because they need other  
19 types of either pipelines or houses or whatever they  
20 need to basically do the overall production of that  
21 mineral, which is not specific to the mineral  
22 itself.

23 Q (By Mr. Ray) So in the oil and gas  
24 context, there often are payments to hold it for  
25 future production, right?

1 A No, that's not what I'm talking about, but  
2 that would be an example of something else, sure.

3 Q Right. Can you name for us, sir, any  
4 other example in which the mineral owner is paid due  
5 to the subsurface presence of a structure?

6 A I don't understand that question. What  
7 kind of structure are you talking about?

8 Q Any kind of structure.

9 A I'm trying to think of an example of a  
10 structure that would be relevant. Are we talking  
11 about like a quarry that's below grade?

12 Q Just a structure that's on the surface.

13 A So how does a structure that's on the  
14 surface relate to the mineral estate?

15 Q Well, it's certainly present subsurface,  
16 is it not?

17 A Okay. I guess I understand your question  
18 now. So, generally, the surface owner would have to  
19 have the permission of the mineral estates below  
20 them, or they would have to have access to their  
21 mineral estate as well, so they can't just  
22 unilaterally do whatever they want.

23 Q So you believe that anytime that  
24 subsurface construction takes place that the consent  
25 of the mineral owner is required?

1 MR. ASHWORTH: Object to the form.

2 A Anytime that you go below the surface, is  
3 it required, I'm sure there's some exception to the  
4 rule.

5 Q (By Mr. Ray) So, for example, if you  
6 build a large commercial building, do you have to  
7 have the consent of the mineral owner to do that?

8 MR. ASHWORTH: Object to the form.

9 A Again, I'm not going to make a legal  
10 conclusion, but, again, if they can't access their  
11 rights, why wouldn't you have to have their  
12 approval?

13 Q (By Mr. Ray) But you've already agreed,  
14 sir, that in this instance, there are significant  
15 parts of the 8400 acres that the mineral estate  
16 owners do have the right to access, true?

17 MR. ASHWORTH: Object to the form.

18 A Well, you're, first of all, assuming they  
19 wanted access in that way, but, again, I've already  
20 said that there could be mining activities on other  
21 portions of the site, yes.

22 Q (By Mr. Ray) Do you have any evidence  
23 that they do want to access any part of these  
24 8400 acres?

25 A Again, they don't want the wind farm there

1 at all, so I don't think they'd have an aspect that  
2 they want to do mining in a different location, no.

3 Q And are you aware of any hard mineral  
4 mining taking place in Osage County other than the  
5 two quarries we've already looked at?

6 A I don't remember looking at the quarries  
7 at all, so I'm not sure what you're referring to  
8 there, so --

9 Q APAC and Burbank. We looked at their  
10 invoices. You're aware of those, right?

11 A Well, I don't consider that the same thing  
12 as looking at the quarries, but I don't know what  
13 the full population of all the quarries are in that  
14 county, so I can't answer that question.

15 Q But you aren't aware of any intention to  
16 mine in the 8400 acres that are subject to this  
17 case, true?

18 A Again, that wouldn't even make sense to  
19 me. They don't want the wind farm there. There's  
20 no indication that they want to mine it themselves  
21 afterward.

22 Q Now, the regulations, sir, require a lease  
23 for mining, right?

24 A I mean, I guess you have to be more  
25 specific. Which regulations are you getting at?

1 Q The regulations you reviewed in this case,  
2 that were at issue in the Tenth Circuit --

3 A I guess I'm not following the question.  
4 what do you mean?

5 Q The regulations that were at issue in the  
6 Tenth Circuit opinion; you understand that, right?

7 A They mention certain particular statutes,  
8 yes, but, again, they defined what they considered  
9 mining in this particular context.

10 Q And it was that activity that required a  
11 lease, right?

12 MR. ASHWORTH: Object to the form.

13 A They're required to get a lease to do  
14 those activities. If they can't do those  
15 activities, they can't have a wind farm. That's  
16 what they're basically saying.

17 Q (By Mr. Ray) And what do you base that  
18 conclusion on, that they -- if they can't do those  
19 activities they can't have a wind farm?

20 A Well, because they constructed it that  
21 way, so they must have felt it necessary to do it.

22 Q Well, we've already seen, sir, in Exhibits  
23 26 and 27 that these materials were available for  
24 purchase from other locations, right?

25 A Then they should have done that broadly.



1 Q Right, but they could have done that; do  
2 you agree?

3 A Doesn't matter what they could or they  
4 should have done, it's a matter of what they  
5 actually did.

6 Q Right.

7 A They didn't get a lease when they were  
8 supposed to get a lease for the activities they did.

9 Q Right. But, in fact, those materials were  
10 commercially available in the county; we've seen  
11 that, correct?

12 A Again, so what? That's not what they did.

13 Q Right.

14 A They did buy some, but they didn't buy  
15 them all.

16 Q Right. But they all were available for  
17 commercial purchase. You don't have a basis to  
18 dispute that, correct?

19 A It was there, so if they wanted to do  
20 that, they should have done that.

21 Q And if they had done that, would they have  
22 required a mineral lease under this opinion?

23 A I don't know. I don't know what the  
24 specific facts and circumstances would be, in that  
25 situation. The Tenth Circuit would have to opine on

1 that. That's not my place.

2 Q But they certainly would have been --  
3 wouldn't have been extracting rock, sorting rock,  
4 crushing rock, and reusing rock from this area,  
5 true?

6 MR. ASHWORTH: Object to the form.

7 A Again, I don't know what they exactly  
8 would have done, because that didn't occur.

9 Q (By Mr. Ray) But you know and understand  
10 that aggregate is readily available for commercial  
11 purpose -- purchase, do you not?

12 A You had to have asked that question at  
13 least 10 times now, so we're not disagreeing on  
14 that. They have access to it. They just didn't do  
15 it that way.

16 MR. RAY: We've been going about an hour.  
17 I'd like to take a rest room break, unless anyone  
18 has an objection.

19 Is that okay with you, sir?

20 THE WITNESS: Sure. You're the boss.

21 THE VIDEOGRAPHER: We're off the record at  
22 2:11 p.m.

23 (A recess was had.)

24 THE VIDEOGRAPHER: We're back on the  
25 record at 2:27 p.m.

1 Q (By Mr. Ray) All right, sir. Let's go  
2 back to your report, if we could, which I believe is  
3 Exhibit Number 18, and if we could take a look at  
4 page 7. All right, sir. I want to take a look at  
5 the first sentence of the first paragraph under --  
6 or actually, I'm sorry, the second sentence of the  
7 first paragraph under the heading of Roman numeral  
8 3.

9 A Okay.

10 Q All right. So this sentence says, "Based  
11 on the documents in the record and independent  
12 research, FTI has determined that the six surface  
13 leases represent a reasonable determination of the  
14 agreement the Osage Nation would have negotiated  
15 with Osage Wind and the most directly comparable  
16 proxy for amounts the Osage Nation itself was  
17 willing and able to pay in order to lease the  
18 property for the specific wind energy project." Do  
19 you see that, sir?

20 A You didn't read it technically right, but  
21 I'm not sure if you did that intentionally or not.

22 Q All right. Well, why don't you -- you can  
23 read it into the record for us, sir.

24 A Well, I mean, the main thing that you did  
25 is, you said the Osage Nation itself was willing and

1 able, that should have been Osage Wind. That's the  
2 main critical change that would have to be made  
3 based on what you said.

4 Q Okay. Anything else that you think was  
5 improper?

6 A Well, again, we could read the whole thing  
7 to make sure it's perfect, but, again, that's the  
8 main thing that would cause a big difference  
9 between -- Osage Wind and Osage Nation are  
10 definitely two different entities.

11 Q Well, why don't you just go ahead and read  
12 it into the record yourself, sir, so that we're sure  
13 it's perfect, as you would say.

14 A And I'm not trying to be difficult, but I  
15 can't see the whole thing, because when you blow it  
16 up, with the way the screens are, it cuts off some  
17 of it. So if you just get rid of the little box, I  
18 can read it. Thank you. "So based on the documents  
19 in the record and independent research, FTI has  
20 determined that the six surface leases represent a  
21 reasonable determination of the agreement that the  
22 Osage Nation would have negotiated with Osage Wind  
23 and the most directly comparable proxy for amounts  
24 that Osage Wind itself was willing and able to pay  
25 in order to lease property for the specific wind

1 energy project."

2 Q Thank you, sir. All right. So what  
3 documents in the record are you referring to that  
4 support this conclusion?

5 A That's all the documents in their  
6 totality. It's based on everything we have. We're  
7 looking at the best and most appropriate proxy for  
8 the damages.

9 Q And you needed some kind of comparable  
10 proxy, right?

11 A Well, I don't think you necessarily needed  
12 that. I mean, you could obviously do a specific  
13 performance type situation where they have to rip it  
14 out, so you wouldn't need the documents in that type  
15 of a remedy.

16 Q Right, but to make a damages calculation  
17 you needed some kind of a proxy, did you not?

18 A I don't know why you're parsing the  
19 damages. Again, in a remedy for damages, you could  
20 have it ripped out, so I don't know what you're  
21 getting at there.

22 Q Well, you either have one or the other,  
23 right? I mean, you either have it removed, or you  
24 have to pay money damages; you understand that,  
25 right?

1 A I think that's a fair --

2 MR. ASHWORTH: Object to the form.

3 Q (By Mr. Ray) What did you say, sir? I'm  
4 sorry, we didn't hear you.

5 A I think that's a fair summary.

6 Q All right. When you're doing a  
7 calculation of damages, as you've done, right,  
8 you're not opining on removal, you've said that  
9 already, right?

10 A I don't think I've said that, but I mean,  
11 again, I wouldn't be opining on that the removal  
12 required, because that's a legal conclusion.

13 Q All right. So you needed some kind of a  
14 proxy to do a damages calculation like you did in  
15 this case, right?

16 A I mean, no, you don't have to have a  
17 proxy. You could do the damages a different way,  
18 but we felt that the proxy in this particular  
19 situation, related to surface owners, was the best  
20 way of determining the damages.

21 Q And are you aware of any other wind energy  
22 project where the mineral owners and the surface  
23 owners have been paid on the same terms?

24 A Well, that dynamic could definitely play,  
25 because, typically, they're the same people, so they

1 would be, of course, on the same terms, but if  
2 you're asking whether they had been bifurcated or  
3 separated, which is relatively unique, I can't think  
4 of one specifically where they would have the exact  
5 same terms.

6 Q Is there any scholarly literature or  
7 anything like that that you reviewed that indicated  
8 that was an appropriate way of determining payments  
9 to mineral owners when a wind farm is constructed?

10 A I mean, it's just standard damage theory,  
11 so I would think any treatise or document related to  
12 damages would look at it that way.

13 Q Specific to wind energy?

14 A Specific to wind energy. No, they don't  
15 get specifically, typically, to a specific industry.  
16 I haven't seen any type of treatise that gets that  
17 specific.

18 Q And have you read any literature that  
19 indicates that a mineral owner should be paid for  
20 mining, other than based on the minerals mined?

21 A Well, I mean, that's not the dynamic here.  
22 Again, you have to get a lease to basically build  
23 the wind farm. It's not a matter of paying for the  
24 minerals. You're building a wind farm, so I don't  
25 understand your question.

1 Q Well, we looked, sir, already at the Tenth  
2 Circuit opinion that clearly said it was the  
3 extraction, sorting, crushing, use of minerals that  
4 required a lease, right? We looked at that?

5 MR. ASHWORTH: Object to the form.

6 A I agree.

7 Q (By Mr. Ray) And there was nothing in the  
8 opinion that just said generally to construct a wind  
9 farm, you have to have a lease, true?

10 MR. ASHWORTH: Object to the form.

11 A I don't understand that question. I mean,  
12 we're talking about this specific case. They had  
13 mining activities, so, therefore, they're required  
14 to have a federally recognized lease, so, therefore,  
15 they can't build it until they get the lease.

16 Q (By Mr. Ray) Right, but there's no mining  
17 going on out there right now?

18 MR. ASHWORTH: Object to the form.

19 A Yeah, we've covered that ground at least  
20 ten times, so I don't know why it matters. It  
21 doesn't matter. They're still being damaged every  
22 day the wind farm is there.

23 Q (By Mr. Ray) And how is that?

24 A How is what?

25 Q How are they being damaged every day that



1 the wind farm is there?

2 MR. ASHWORTH: Object to the form.

3 A Because it's physically there. They don't  
4 want it there. It's physically there. So every day  
5 it's there, it's impacting their particular property  
6 rights.

7 Q (By Mr. Ray) Do you have an understanding  
8 of property rights that surface and mineral owners  
9 have in Osage County?

10 MR. ASHWORTH: I'm sorry, Ryan, you broke  
11 up there. Can you re-ask that?

12 MR. RAY: Yes, sir.

13 Q (By Mr. Ray) Do you have an understanding  
14 of the property rights that surface and mineral  
15 owners have in Osage County, Oklahoma?

16 MR. ASHWORTH: Object to the form.

17 A I have -- sorry. I have a general  
18 understanding of that. I'm not making a legal  
19 conclusion, just so we're clear.

20 Q (By Mr. Ray) And is there anything, sir,  
21 in the Tenth Circuit's opinion that you can point to  
22 that says that the mineral owner has the right to  
23 say no to anything other than the mineral  
24 development activities that the Tenth Circuit  
25 described?

1 A I don't think it's specific enough to that  
2 particular dynamic in the Tenth Circuit, because  
3 that wasn't the situation at the time that they're  
4 willing, so you'll have to ask them that question.

5 Q Well, let's pull up the Tenth Circuit's  
6 opinion again, if we could, Exhibit 19. Let's go to  
7 page 3. At the top, sir, we've looked at this  
8 already, it says, "Osage Wind's extraction, sorting,  
9 crushing and use of minerals as a part of its  
10 excavation work constituted mineral development,"  
11 right?

12 A Yes.

13 Q "And thereby requiring a federally  
14 approved lease," true?

15 A Which Osage Wind failed to obtain, yes.

16 Q Right. There's nowhere in here that they  
17 say, to operate a wind farm on an ongoing basis you  
18 need this kind of a lease; true?

19 MR. ASHWORTH: Object to the form.

20 A It doesn't say the opposite either, but,  
21 obviously, you have -- you have to have a lease to  
22 build a wind farm. You have to negotiate with the  
23 mineral estate owners to get that right. So if  
24 you're suggesting there's another set of facts where  
25 they could have built this wind farm a different

1 way, that's fine. You can argue that, but again,  
2 that's not what specifically happened in this case.

3 Q (By Mr. Ray) But if it had, is there  
4 anything you can point to in this opinion that would  
5 say a lease was required, if this didn't happen?

6 A Again, the Circuit is looking at the  
7 specifics of this case. They don't go into all of  
8 the potential hypotheticals about other sets of  
9 facts that could have or could not have occurred, so  
10 of course, it doesn't have all of those different  
11 options in here.

12 Q Do you understand, sir, who has the right  
13 to -- who has the rights for a wind project in a  
14 given piece of property? Do you have that  
15 understanding?

16 MR. ASHWORTH: Object to the form.

17 Q (By Mr. Ray) If there's bifurcated  
18 mineral ownership, let's be clear on that.

19 A I'm sorry, I don't even know what the  
20 question is.

21 Q The question is, do you have an  
22 understanding of who has the right to approve or  
23 disapprove a wind energy project?

24 MR. ASHWORTH: Object to the form.

25 A I have not looked into that. It's a legal

1 conclusion, so I would not make that opinion.

2 Q (By Mr. Ray) So you're not rendering that  
3 opinion in this case, true?

4 A If you're asking about the legal opinion,  
5 absolutely not. I'm not a lawyer. That's not my  
6 place.

7 Q Let's go back to your report, sir, page 7.  
8 I believe that's Exhibit 18. And you reference, as  
9 we've seen, sir, that "the surface leases represent  
10 a directly comparable proxy for amounts that Osage  
11 Wind itself was willing and able to pay." Do you  
12 see that?

13 A Yes.

14 Q And what would they have been paying for?

15 A The right to obtain that lease.

16 Q And they needed the lease to do what?

17 A To construct -- ultimately, to construct  
18 the wind farm because, again, the way they did it,  
19 they would need to have that lease to basically do  
20 the complete project.

21 Q Did any of the regulations you looked at,  
22 sir, make reference to constructing a wind energy  
23 project?

24 MR. ASHWORTH: Objection to form.

25 A I mean, I don't remember a specific one

1 talking about a wind energy project, but there may  
2 be one there. I don't know.

3 Q (By Mr. Ray) Let's go back, if we could,  
4 to Exhibit 20, and if we could, let's look at page  
5 9.

6 A Where are you seeing page numbers on  
7 these?

8 Q Are you looking, sir, at the page that  
9 says 25 CFR, Section 214.7?

10 A Yes.

11 Q Yes, we are on the correct page.

12 A Great, perfect. Thank you.

13 Q All right. Now, this regulation ties the  
14 need for a lease to mining; yes?

15 MR. ASHWORTH: Object to the form.

16 A I mean, the first sentence says, "No  
17 mining or work of any nature," so I guess if that's  
18 what you're saying relates to mining, I have no  
19 problem with that.

20 Q (By Mr. Ray) This certainly doesn't say  
21 anything about operating a wind energy project in  
22 this provision, true?

23 MR. ASHWORTH: Object to the form.

24 A There's work of any nature, so I don't  
25 know what your definition of work of any nature

1 versus operations, if you're trying to parse that  
2 out, I guess.

3 Q (By Mr. Ray) Well, let's take a look  
4 again, sir, at the Tenth Circuit opinion, and if we  
5 could go to page 5 of that. And take a look, if you  
6 would, sir, at footnote two, sir. And we see there  
7 that the Tenth Circuit says they are not addressing  
8 the significance of the phrase, work of any nature;  
9 do you see that?

10 A I mean, it says more than that, but it  
11 does say that, yes.

12 Q But they did -- they did talk about mining  
13 a number of times in the opinion, did they not?

14 A Yeah. I mean, I don't know what you're  
15 getting at there. I mean, this says that OMC does  
16 not argue, so they're not even arguing about that  
17 particular phrase. They're arguing about the mining  
18 aspect, so I don't know what you're getting at  
19 there.

20 Q Right. So the only basis of the Tenth  
21 Circuit's conclusion was that mining, as they  
22 defined it, occurred. That's what required a lease?

23 A But, again, there may be other things that  
24 require a lease as well. Just because they dealt  
25 with that one dynamic doesn't mean it's the only

1 dynamic.

2 Q Is there any other language you can point  
3 us to anywhere in this opinion, sir, that would say  
4 they are basing their decision on other dynamics, as  
5 you said, besides mining?

6 A Again, you're asking for --

7 (Simultaneous speakers.)

8 MR. ASHWORTH: Object to the form.

9 A I mean, this particular order is about a  
10 specific facts and circumstances.

11 Q (By Mr. Ray) Of this case, right --

12 A It doesn't incorporate all other ten  
13 potentially facts and circumstances; they are  
14 dealing with this specific facts and circumstances.

15 Q Which is --

16 A So of course, there's not something about  
17 all these other alternatives that we could make up  
18 in that order. It doesn't even make sense.

19 Q Right, and the only specific alternative  
20 that they're talking about is the conclusion that  
21 mining occurred?

22 A I mean, my opinion, it's the only thing  
23 before the Court, so that's what they're talking  
24 about, yes.

25 Q And they didn't say that anything else

1 required a lease, other than mining?

2 A Again --

3 MR. ASHWORTH: Object to the form.

4 A -- they're dealing with the facts and  
5 circumstances of this case, so they're dealing with  
6 this case. They didn't investigate or determine  
7 other facts and circumstances.

8 Q (By Mr. Ray) Right, and nothing else that  
9 occurred in this case, besides mining, did they say  
10 required a lease in these specific circumstances,  
11 correct?

12 A They weren't asked to look --

13 MR. ASHWORTH: Object to the form.

14 A They weren't asked to look at all those  
15 other potential options, so I don't know what they  
16 would determine in that situation.

17 Q (By Mr. Ray) There's just nothing you can  
18 point us to where they said they did conclude that  
19 anything other than that required a lease?

20 A Again, why would I have to point --

21 MR. ASHWORTH: Object to the form.

22 A -- to anything like that? I mean, this  
23 particular order is related to a specific dynamic.  
24 They didn't cover other ten potential dynamics, so  
25 of course, they wouldn't cover that in this



1 particular order. It doesn't make sense.

2 Q (By Mr. Ray) Are there other --

3 A It makes no sense, Counsel.

4 Q Are there other dynamics that you believe  
5 required a lease in this case?

6 A I haven't looked into that, so I don't  
7 know the answer to that.

8 Q So the only dynamic that you're aware of  
9 is that the Tenth Circuit said certain activities  
10 constituted mining, thereby requiring a lease; yes?

11 A That's what the order says, yes.

12 Q And it doesn't say that anything else  
13 about the specific facts and circumstance of this  
14 case required a lease?

15 A Again, you can ask me the same question 17  
16 different times. I'm not going to give you a  
17 different answer. They didn't identify other  
18 dynamics, so of course, they didn't answer the  
19 question of those dynamics. They're only dealing  
20 with the facts and circumstances of this case, based  
21 on the allegations and arguments.

22 Q Does any other allegation or argument that  
23 you're aware of in the facts of this case require a  
24 lease?

25 A Again, I haven't looked into other

1 dynamics. This particular case is very clear, based  
2 on what the Tenth Circuit decided.

3 Q Do you have anything, sir, that you're  
4 aware of to suggest this wind energy project was  
5 constructed in a way different from any other wind  
6 energy project is normally constructed? Are you  
7 aware of any such facts?

8 MR. ASHWORTH: Object to the form.

9 MR. BABST: Same.

10 A I mean, it seemed pretty standard to me.  
11 I did not investigate whether it was done in a  
12 different way, so I don't know the answer to your  
13 question.

14 Q (By Mr. Ray) But it seemed pretty  
15 standard to you, based on what you know, right?

16 A Again, there's different types of wind  
17 farms.

18 MR. ASHWORTH: Object to the form.

19 A So if you talk about a wind farm that's  
20 out in the water, it's going to be done differently  
21 than what's done on land, of course. So it depends  
22 on what you're getting at there, but do I think the  
23 construction activities were reasonable, based on  
24 what they had to do, yes.

25 Q (By Mr. Ray) Do you have anything to

1 suggest they were different from others that were  
2 constructed on land?

3 A I mean, again, if you have a construction  
4 on a hilly side versus a mountain versus a flat  
5 land, of course, it's going to be different. The  
6 construction aspects are going to be different. So  
7 it is what it is. You do the construction based on  
8 the specific topography of the land that you have.

9 Q And did you, sir, see any sources of  
10 material or have any knowledge, other than your  
11 opinion in this case, of surface owners and mineral  
12 owners being paid the same amounts for a wind  
13 project? Is there any other project you can  
14 identify for us like that?

15 A Again, that's not my opinion in this case.  
16 We're talking about it's similar to that, and we're  
17 being conservative, but I have not seen that  
18 specific dynamic, because, again, generally the  
19 mineral estate gets more than the surface estate.

20 Q Are you aware of any wind energy project  
21 where the mineral owner has received more than the  
22 surface owner?

23 A I'm not aware of that, because, typically,  
24 they're the same people.

25 Q Let me ask you this, sir, are you aware of

1 a coal mine where the surface owner gets paid more  
2 than the mineral owner?

3 A I'm not aware of that. Is it possible  
4 that occurs, it's possible.

5 Q And, sir, what is the basis for your  
6 conclusion that the amounts paid to the surface  
7 owners are a directly comparable proxy to what  
8 should have been paid to the Osage Nation here?

9 MR. ASHWORTH: Object to the form.

10 A This negotiated deal between the various  
11 parties is exactly the same land in question. One  
12 is the subsurface, one is the surface, so they're  
13 very close in proximity to each other. It's all the  
14 dynamics to make it the best approximation of the  
15 minimum amount that the mineral estate owner should  
16 receive.

17 Q (By Mr. Ray) You understand that in most  
18 cases the mineral owner and the surface owner are  
19 paid differing amounts based on what's occurring,  
20 are you not?

21 MR. ASHWORTH: Object to the form.

22 A Well, that question makes no sense, so, I  
23 mean, do you want me to try to answer that?

24 Q (By Mr. Ray) Well, let me start with an  
25 example, sir. So how about oil and gas, if we have

1 a different mineral owner and a different surface  
2 owner? The surface owner is usually paid relatively  
3 nominal amounts for what's called surface damages;  
4 you're aware of that, right?

5 A That's a fair statement, but, again,  
6 that's the exception to the general rule, that the  
7 mineral owner and the surface owner are the same  
8 party.

9 Q Right. But if we assume that's not the  
10 case, okay?

11 A Assume what's not the case?

12 Q That the mineral owner and the surface  
13 owner are not the same person.

14 A In unique circumstances where they're not  
15 the same? That's what you're -- that's fine.

16 Q Well, did you know that that's more often  
17 the case in the state of Oklahoma than not?

18 A That what's the dynamic?

19 MR. ASHWORTH: Object to the form.

20 Q (By Mr. Ray) What's that?

21 A That what's the dynamic is more common?

22 Q That different mineral and surface  
23 ownership.

24 A Ultimately, or at the time of the original  
25 lease?

1 Q No, just generally in the state of  
2 Oklahoma.

3 A I have seen that. I've talked to a couple  
4 of attorneys that say in Oklahoma it does happen  
5 from time to time, and, you know, I don't know if  
6 it's more than 50 percent, but it definitely happens  
7 more in Oklahoma than other places.

8 Q So in that situation, if there's an oil  
9 and gas well, certainly the mineral owner is -- and  
10 let's assume it's successful. The mineral owner is  
11 going to be paid vastly more than the surface owner;  
12 true?

13 A Vastly is a --

14 MR. ASHWORTH: Object to the form.

15 A -- relative term, but, again, they  
16 generally get paid more and sometimes substantially  
17 more.

18 Q (By Mr. Ray) And that's because the  
19 mineral owner has the right to exclusively take  
20 those minerals. You understand that, right?

21 A That's reasonable.

22 Q And I take it you just -- you have no  
23 understanding of who has the right to grant wind  
24 energy rights in the state of Oklahoma, right?

25 A I haven't looked into the legal aspect of

1 who has the rights to grab those or not, no.

2 Q Let's look, sir, at one specific category  
3 of your report, and that will be on page 11 of your  
4 report.

5 A Okay.

6 Q And that is pasture damages; do you see  
7 that?

8 A I do.

9 Q And you state there that that is a payment  
10 equal to \$28 per acre related to pasture/forage  
11 grass actually destroyed or damaged; do you see  
12 that?

13 A Yes.

14 Q All right. Now, did the mineral estate  
15 owner have any rights in pasture or forage grass?

16 A No.

17 Q So how is it that they should receive a  
18 payment that is for only forage grass actually -- or  
19 pasture grass actually destroyed?

20 A Because we're looking at the overall  
21 equation, first of all, and there would be similar  
22 dynamics to the subsurface of things that were  
23 affected. They would just use different semantics,  
24 a different way of calling it, but it would have the  
25 same type of category of damages.

1 Q Do you know the circumstance under  
2 which -- do you know the circumstances under which  
3 pasture or forage grass was actually destroyed in  
4 this situation?

5 A Oh, I think there was some information  
6 about that, but I don't remember the specifics.

7 Q So do you know for a fact that that  
8 implicated any right of the mineral owner?

9 A Again, it's not -- I'm not trying to get  
10 that precise. The situation here is we have a  
11 proxy. So they would use different semantics, and  
12 we fully agree with you, it's for -- basically,  
13 that's more appropriate to subsurface, but they're  
14 going to negotiate similar types of payments over  
15 time for the dynamics that are specific to  
16 subsurface.

17 Q And what would you use as the similar  
18 subsurface comparable, if you will, to the pasture?

19 A I haven't thought about that. I don't  
20 know. I would have to think about that.

21 Q Yet, you, in fact, have concluded that  
22 those payments are due as a part of your analysis,  
23 true?

24 A I've already explained to you why we did  
25 that.



1 Q Is it just because it's in the surface  
2 lease?

3 A No. I've already explained to you why we  
4 did that. It's in the surface lease, which is a  
5 true statement, but I explained to you why we took  
6 it to the next step.

7 Q And why is that?

8 A Again, I've already explained that to you.  
9 Do you want me to explain it to you again?

10 Q Yes, please.

11 A So I've already told you that the  
12 semantics of these names would likely be different  
13 for the subsurface owners. We appreciate that, but  
14 we're trying to use these as a proxy on an overall  
15 basis and not get definitive on what specific  
16 dynamic, because of the semantics side of the  
17 equation, because they would negotiate similar  
18 payments, and, likely, if they were being our  
19 negotiators, even more payments, because, generally,  
20 the mineral estate is worth more. So, again, we're  
21 being conservative in using the surface lease as a  
22 proxy for reasonable damages.

23 Q And the mineral estate is only worth more  
24 when it's tied to an actual mineral in place,  
25 correct?

1 A No. I mean, I don't agree with that  
2 statement, no.

3 Q Well, you only get -- let's take your  
4 example, sir, of gold. I mean, you only get paid  
5 for gold if you actually have gold under your  
6 property, true?

7 A That's true.

8 Q The same is true of coal?

9 A There's different dynamics with different  
10 ores. I totally agree with you.

11 Q What about limestone?

12 A What about it?

13 Q Do you get paid for limestone if there  
14 isn't actually limestone under your land?

15 A Can you just do the whole thing again?  
16 You cut out near the beginning.

17 Q Yeah. Do you get paid for limestone if  
18 there isn't actually limestone under your land, as a  
19 mineral owner only?

20 A Well, again, the tribe doesn't want to get  
21 paid for the limestone, the tribe doesn't want any  
22 mining activities to occur. You have to get a  
23 lease, so I'm not sure what you're asking there.

24 Q My question is more general, sir. My  
25 question is, are you paid for limestone as a mineral

1 owner if there is not limestone under your property?

2 A Okay.

3 MR. ASHWORTH: Object to the form.

4 A I don't understand that question. It's  
5 like saying, okay, you get paid for the lumber if  
6 you don't have any trees.

7 Q (By Mr. Ray) Right.

8 A Well, of course not.

9 Q Right. The only value to that comes from  
10 if you can sell timber in your example, right?

11 A No, because if I have trees there --

12 MR. ASHWORTH: Object to the form.

13 A -- and I just happen to like those trees,  
14 and I don't want you to tear them down, I don't want  
15 you to touch the trees at all.

16 Q (By Mr. Ray) Well, but let's assume that  
17 the trees were taken down somehow, intentionally,  
18 negligently, whatever. I mean, would you try to  
19 assess the value, other than from the value of the  
20 trees?

21 MR. ASHWORTH: Object to the form.

22 A Yes, because the negotiations to obtain  
23 the right to cut those down would be different under  
24 that dynamic when I don't want them taken down at  
25 all. If you unilaterally go in there, you know,

1 maliciously, or whatever word you just used there,  
2 and you did it wrong, why should you get the benefit  
3 of the doubt of that? I would never have wanted you  
4 to take those trees down in the first place.

5 Q (By Mr. Ray) But are you aware, sir, of  
6 the principles that would be in play, if there were  
7 a case like that, in calculating --

8 MR. ASHWORTH: Object --

9 Q -- damages?

10 MR. ASHWORTH: Object to the form. Ryan,  
11 this kind of seems like a dead horse, but if you  
12 want to keep beating the horse, go ahead.

13 Q (By Mr. Ray) You can answer, sir.

14 A What's the principles you're talking  
15 about? I don't know what you mean by that term.

16 Q We're talking about trees, right? You  
17 raised trees and timber; yes?

18 A I used it as an example, yes.

19 Q Right. Okay. So if there were litigation  
20 over trees that were -- let's say they were your  
21 trees, okay? Are you with me?

22 A Okay. Yeah.

23 Q All right. Let's say that I've cut them  
24 down somehow; okay?

25 A Okay.

1 Q Then you sue me for that. Okay?

2 A Yeah.

3 Q If you were a damages expert in that case,  
4 are the -- how would you calculate the damages?

5 A Well, the most --

6 (Simultaneous speakers.)

7 MR. ASHWORTH: Object to the form.

8 A -- you would see in that situation is you  
9 have to put the trees back in the same shape, form,  
10 size and so forth. If there's for some reason,  
11 which I have seen cases where that's not practical,  
12 it depends on the circumstances. Is there views  
13 involved? Is there water tables involved? Is  
14 there -- what are the other dynamics of why those  
15 trees are important? That will affect the facts and  
16 circumstances of that case and what the damages  
17 might be.

18 Q (By Mr. Ray) But what if they are just  
19 trees and you've never used them for any particular  
20 purpose?

21 MR. ASHWORTH: Object to the form.

22 A It doesn't matter. I like those trees, so  
23 what does it matter?

24 Q (By Mr. Ray) But do you think in that  
25 situation that I would owe you for more than the

1 value of the trees?

2 MR. ASHWORTH: Object to the form.

3 A If you're asking me as a layperson, not  
4 based on a legal conclusion, absolutely. I love  
5 those trees. I don't want those trees gone. So it  
6 doesn't compensate me appropriately for you to give  
7 me, quote, the value of that tree. That doesn't do  
8 it.

9 Q What would be a comparable there? How  
10 would you determine that?

11 MR. ASHWORTH: Object to the form.

12 A I've already given you examples of that.  
13 The first thing is to put the trees back in the  
14 exact same trees that were there before. That's one  
15 comparable. If that's not an appropriate remedy for  
16 any reason, you have to look at all the other  
17 dynamics of why those trees are important.

18 Q (By Mr. Ray) And my example, sir, is a  
19 little bit further, though. If there are no other  
20 dynamics, if those trees are just there, you've  
21 never -- you've never even been to the location they  
22 are.

23 MR. ASHWORTH: Object to the form.

24 A So you're telling me I love these trees,  
25 but I've never even seen them; is that what you're

1 trying to say?

2 Q (By Mr. Ray) I'm trying to say you own a  
3 big piece of property, and there were trees, but  
4 you've never really been to the tree site or had any  
5 special use for the trees; do you understand?

6 MR. ASHWORTH: Object to the form.

7 A I don't care.

8 MR. ASHWORTH: Object to the form.

9 A They are my trees. I can do what I want  
10 with my trees.

11 Q (By Mr. Ray) Right, but we're trying to  
12 understand how you would determine a value of those  
13 trees, if you were asked to calculate damages in  
14 that situation.

15 MR. ASHWORTH: Object to the form.

16 A And I've already said that at least three  
17 times now.

18 Q (By Mr. Ray) How would you monetize that?

19 A I've already answered that question three  
20 times now.

21 Q Well, answer it a fourth.

22 A Okay.

23 MR. ASHWORTH: Object to the form.

24 A The first option is, you'd have to go to  
25 all the cost and expense for the tree itself, for

1 all of the movement of those trees, you have to  
2 obtain those trees, you have to find those trees,  
3 and you have to put those trees back. That's the  
4 first option.

5 Q (By Mr. Ray) Okay.

6 A Quantify that cost.

7 Q Okay.

8 A Okay. Under the other dynamic, for  
9 whatever reason they can't be replaced or they don't  
10 want to replace them or for whatever reason this  
11 judge says they don't have to replace them, there's  
12 all sorts of different dynamics that I can take into  
13 account, related to specific costs related to those  
14 trees that we've already talked about, but other  
15 pain and suffering, whatever the dynamics are of  
16 that particular case of why I want those trees  
17 there.

18 Q Would the value of the trees play any  
19 account in your second situation at all?

20 A Sure.

21 MR. ASHWORTH: Object to the form. Ryan,  
22 let me just -- let me interject real quick. I just  
23 felt that you may need me to explain. This case  
24 doesn't relate to trees. Your line of questioning  
25 is really becoming borderline harassing, if not way



1 over the line, so just keep that in cognizant here  
2 for the witness here.

3 You can answer.

4 MR. RAY: Well, just for the record, sir,  
5 we can ask hypotheticals of an expert witness,  
6 that's very clearly established, and we're entitled  
7 to do that.

8 MR. ASHWORTH: Well, I think this goes  
9 beyond hypotheticals. It goes more towards the line  
10 of harassment. It seems like we've been going --  
11 talking about trees for over an hour now.

12 MR. RAY: The record --

13 MR. ASHWORTH: You can ask hypotheticals,  
14 but, I mean, you also can't harass the witness.

15 MR. RAY: Well, I disagree that the  
16 witness is being harassed.

17 Can you read back the last question,  
18 please?

19 (The requested portion was read back.)

20 A I said, yes, that's one dynamic of the  
21 equation, which I've already stated multiple times,  
22 so I've already agreed with you that's part of the  
23 equation; it's not the only equation.

24 Q (By Mr. Ray) I think the only other thing  
25 you identified was potential pain and suffering?

1 A No. You're not listening.

2 Q All right. What else? What else? Okay.  
3 So you've said potential pain and suffering?

4 A I like that particular sight line with the  
5 trees there. If you take the trees out, it causes  
6 erosion to that part of the property. You can come  
7 up with a variety of different facts and  
8 circumstances why those trees are important besides  
9 me just wanting to see them. Based on those facts  
10 and circumstances, you would calculate the damages,  
11 based on the damages to that party from those trees  
12 being removed improperly.

13 Q Would that be based on something  
14 objective, or would it just be any number you wanted  
15 it to be?

16 MR. ASHWORTH: Object to the form.

17 A I would calculate those damages with  
18 reasonable certainty, just like I did in this case.

19 Q (By Mr. Ray) Let me ask you this, sir.  
20 How is it that you conclude that Osage Wind itself  
21 was willing and able to pay these amounts to the  
22 mineral owner? Is that --

23 A That they are willing --

24 Q -- based on any objective evidence?

25 A Besides the fact that they're willing and

1 able to pay the surface owners?

2 Q Well, do you know whether that -- that  
3 additional amount would make the project  
4 economically viable or not? Do you know that, for  
5 example?

6 A They would have to decide that and decide  
7 if they want to produce the property at all and not  
8 put a wind farm here at all, but they should have  
9 determined that on the front end, not the back end.

10 Q But is there anything, sir, other than the  
11 fact that payments like that were made to the  
12 surface owners that you base that conclusion on?

13 A I think it's all the facts and  
14 circumstances in this case. It's based on the  
15 financial performance, it's based on all of the  
16 documentation in the record, that they should get a  
17 similar amount to the surface owners and actually  
18 probably get more.

19 Q But you're not aware of any other wind  
20 energy project in the United States where a separate  
21 mineral owner has even been paid anything, are you?

22 MR. ASHWORTH: Object to the form.

23 A Again, this is a little bit different  
24 dynamic in that case. So Osage Wind, it's their  
25 requirement to understand all the things they have

1 to do to build this project. They had to get a  
2 lease, based on the Tenth Circuit, so they should  
3 have got a lease.

4 Q (By Mr. Ray) Well, the Tenth Circuit  
5 opinion didn't come down until after the fact,  
6 right?

7 A Okay. So if you do something incorrectly  
8 because you decide not to do something, you should  
9 get the benefit of the doubt; is that what you're  
10 suggesting?

11 Q No, I'm asking you, sir, when the Tenth  
12 Circuit's decision came down, before or after this  
13 activity occurred?

14 A So you're asking me if the litigation  
15 occurred after they did something they weren't  
16 supposed to. Of course, it happened after, so of  
17 course, the appeal happened after. They had already  
18 committed the problem.

19 Q And you're also aware, sir, are you not,  
20 that a federal judge concluded that the activity did  
21 not constitute mining in the first instance, yes?

22 MR. ASHWORTH: Object to the form.

23 A The appeals gets to basically override  
24 that, so sure, I agree with you.

25 MR. ASHWORTH: Ryan, are we at a stopping

1 point for a break?

2 MR. RAY: Sure.

3 MR. ASHWORTH: Perfect.

4 THE WITNESS: Five minutes?

5 MR. RAY: Yep.

6 MR. ASHWORTH: Five minutes will work.

7 THE VIDEOGRAPHER: We're off the record at  
8 3:11 p.m.

9 (A recess was had.)

10 THE VIDEOGRAPHER: We're back on the  
11 record at 3:20 p.m.

12 Q (By Mr. Ray) All right, sir. You've  
13 mentioned several times that the mineral owner is  
14 usually paid more than the surface owner in your  
15 view; do you recall that testimony?

16 A I actually think you said it first, and I  
17 agreed with you.

18 Q But you've said it -- irrespective of who  
19 said it, you've said it, right?

20 A Yes.

21 Q Are you aware of a situation in which that  
22 is true, where it is not tied to a valuable mineral  
23 deposit that's either being produced or expected to  
24 be produced?

25 MR. ASHWORTH: Object to the form.

1 A I can't think of a specific instance like  
2 that, but I wouldn't be surprised if that occurred.

3 Q (By Mr. Ray) Can you name one instance  
4 that you're aware of where that has occurred?

5 A I literally just answered that question,  
6 literally.

7 Q So the answer is no, you cannot?

8 A I literally just answered the question. I  
9 said, I'm not aware of one that specifically has  
10 those dynamics, but I wouldn't be surprised if it --  
11 if something did.

12 Q And is there anything that you rely on to  
13 support that belief, that you wouldn't be surprised  
14 if it did?

15 A Just because the dynamics of each mine are  
16 different, and so it could be that direction, it  
17 could be the other direction, it could be equal, it  
18 could be all sorts of different things based on the  
19 facts and circumstances of that particular case.

20 Q But all the instances that you're  
21 personally aware of where a mineral owner is paid  
22 more, it's based on either the production of  
23 minerals or anticipated production of minerals?

24 A Well, that's generally what happens in a  
25 mine, so I think that's true, but I would have to

1 look at all the cases to see if that dynamic was  
2 always the case.

3 Q But, certainly, that's how it generally  
4 works with a mine, correct?

5 A That's fair.

6 (Exhibit 22 marked for identification.)

7 Q (By Mr. Ray) Let's take a look, if we  
8 could, at Exhibit Number 22. And were you aware,  
9 sir, that the regulation provides here in Section  
10 211.127(a) (sic) that the primary term of a lease  
11 cannot extend ten years?

12 MR. ASHWORTH: Object to the form. I'm  
13 sorry, is this 214, you said?

14 MR. RAY: 211.27.

15 A Are you asking am I aware of this  
16 provision, or are you trying to extend it to  
17 basically say that all leases have to be 10 years or  
18 less? Is that what you're suggesting?

19 Q (By Mr. Ray) I'm asking you, sir, if you  
20 were aware of this provision?

21 A I'm aware of this provision.

22 MR. ASHWORTH: Object to the form.

23 Q (By Mr. Ray) All right. And the lease  
24 does -- or the regulation does, in fact, contemplate  
25 that a lease could extend beyond ten years, does it

1 not?

2 MR. ASHWORTH: Object to the form.

3 A That's true.

4 MR. ASHWORTH: I think you're  
5 mischaracterizing this reg.

6 A I was just going to say that, but sorry  
7 about that. Go ahead.

8 Q (By Mr. Ray) Right. And that's as long  
9 as the minerals specified in the lease are produced  
10 in paying quantities, right? That's what we see  
11 there in the first sentence.

12 A You totally cut out of that.

13 Q I'm sorry. We see there that the  
14 situation in which that can happen is so long as  
15 thereafter as minerals specified in the lease are  
16 produced in paying quantities, correct?

17 A I don't interpret this that way, but,  
18 again, if a judge or somebody else interprets it  
19 that way, that's fine, but it says, "absent specific  
20 lease provisions to the contrary," and you're  
21 suggesting that that rest of it is defining that,  
22 which I don't agree with you. I think it's exactly  
23 the situation here. You have a 25-year lease.  
24 There's no reason there can't be a 25-year lease  
25 based on the specific provisions of the lease,



1 because of the wind farm being there for 25 years  
2 plus.

3 Q But this clearly says, "All leases shall  
4 be for a term -- shall be for a term not to exceed a  
5 primary term of lease duration of ten years." That  
6 language is, in fact, in the regulation, is it not?

7 MR. ASHWORTH: I'm going to interject here  
8 real quick and make an objection. Ryan, I'm not  
9 accusing you of being unethical here, but you know  
10 very well that the Tenth Circuit said that this  
11 regulation doesn't apply to this -- to this lease.  
12 Eleven -- sorry, 211 doesn't apply, but 214 does.  
13 So simply apply it to the Osage matters. Now, I'm  
14 not saying you're unethical in trying to get him to  
15 admit -- or trying to suggest to him that this would  
16 apply and question him on this, but I just want to  
17 throw that out there. I mean, let's watch  
18 ourselves.

19 A What was the question? I'm sorry, what  
20 was the question?

21 MR. RAY: Could you read back the last  
22 question, please?

23 (The requested portion was read back.)

24 A I mean, you use all sorts of words in  
25 there I would disagree with. You use the word

1 clearly. I don't think it's clearly at all. It has  
2 ten years in there, so it clearly says 10 years, but  
3 it talks about absent specific lease provisions. In  
4 the next sentence it talks absent specific lease  
5 provisions to the contrary. I mean, it has all  
6 sorts of different caveats just in that first  
7 paragraph alone.

8 Q (By Mr. Ray) Sir, does the absent  
9 specific lease provisions to the contrary relate to  
10 the term?

11 MR. ASHWORTH: Object to the form.

12 A You tell me. You're the lawyer. I don't  
13 know. I'm not making legal conclusions.

14 Q (By Mr. Ray) You just don't -- you don't  
15 know how long that a term of a lease can be  
16 permitted to be under these regulations?

17 MR. ASHWORTH: Object to the form.

18 A I honestly don't care, because I'm talking  
19 about the damages, so you can interpret it any way  
20 you want. It's not going to change my conclusion.

21 Q (By Mr. Ray) I believe you said earlier,  
22 sir, that you do not ascribe any damages to the  
23 renewal term. Did I understand you correctly there?

24 A We didn't specifically calculate the  
25 renewal term, correct.

1 MR. RAY: All right. Let's go back to  
2 Mr. Hazel's report, if we could, and if we could go  
3 to page 19. That's Exhibit 18.

4 THE VIDEOGRAPHER: You did say Mr. Hazel's  
5 report?

6 MR. RAY: I did. Exhibit 18, please.

7 THE VIDEOGRAPHER: One moment. I've got a  
8 technical issue here. For some reason it is not  
9 displaying. Could we go off the record for a  
10 moment, please?

11 MR. RAY: Certainly.

12 THE VIDEOGRAPHER: We're off the record at  
13 3:30 p.m.

14 (A recess was had)

15 THE VIDEOGRAPHER: We're back on the  
16 record at 3:30 p.m.

17 Q (By Mr. Ray) All right, sir. This is on  
18 page 19 of your report. It certainly appears to me  
19 that you have calculated, about halfway through  
20 table 7, future operating fees for the renewal term  
21 period. Do you see that?

22 A Yeah, I stand corrected, you're right. We  
23 did include the 20 years at the discounted amount,  
24 you're right.

25 Q So should that be removed?

1 A No, I mean, it is what it is. It's based  
2 on the time period of 2036 to 2056. We've already  
3 risk adjusted, so it's still a fair calculation.

4 Q And how is it risk adjusted? Explain that  
5 to me, sir.

6 A Okay. Sorry, because we didn't just use a  
7 pure time value money, we used a risk adjusted rate.

8 Q And what was the -- what was the risk  
9 adjustment?

10 A I don't know what you're asking there.

11 Q You said you used a risk adjusted rate;  
12 yes?

13 A Yes.

14 Q How did you determine the risk adjusted  
15 rate?

16 A The same way we considered the discount  
17 rate in the other future operating fees, based on a  
18 proxy of ocean, winds, cost of capital, plus an  
19 add-on.

20 Q And did you take into account if these  
21 additional amounts were owed how that would affect  
22 the calculation?

23 A Sorry, you cut out on me again.

24 Q I'm sorry. Did you take into account if  
25 these additional amounts were owed how that would

1 affect the calculation?

2 A I'm sorry, I don't understand that  
3 question.

4 Q Well, so if an additional \$25 million were  
5 owed, did you take that into account in your  
6 calculations?

7 A Again, I don't understand your question.  
8 What additional 25 million? I don't understand your  
9 question.

10 Q Well, I'm talking, sir, about the roughly  
11 25 million that you conclude in this chart. That  
12 would affect the cost of capital, would it not?

13 A The 25 million in and of itself affects  
14 the cost of capital? No.

15 Q For this project it certainly would, would  
16 it not?

17 A No.

18 Q Why not?

19 A That question doesn't even make any sense,  
20 so how am I supposed to answer a question of why not  
21 of something that makes no sense?

22 Q How would you define the cost of capital  
23 for the Osage Wind project?

24 A Just like anybody would define the cost of  
25 capital in any basic finance book.

1 Q How --

2 A It's basically the cost to that particular  
3 person.

4 Q And if your method were accepted, the cost  
5 to Osage Wind of this project would go up by more  
6 than \$25 million, would it not?

7 A No.

8 Q Why not?

9 A Again, you're asking me why not about  
10 questions that make no sense. So how am I supposed  
11 to answer that?

12 Q Well, certainly, Osage Wind incurred a  
13 cost to construct this project; would you agree with  
14 that?

15 A Agreed.

16 Q And if your calculations were accepted,  
17 the cost of this project would go up by,  
18 potentially, more than \$25 million?

19 A I see what you're getting at. No, I would  
20 agree with that from a pure accounting standpoint,  
21 but the ongoing payments would go up by 25 million,  
22 so the overall cost, if you want to look at it that  
23 way, has increased. I agree with that.

24 Q And do you think that increase might  
25 affect the decision of whether or not to renew?

1 MR. ASHWORTH: Object to the form.

2 A Well, no, because most of those costs are  
3 sunk, that means they have already been expended,  
4 and so, therefore, they wouldn't be relevant for  
5 that decision at the time of the renewal. The  
6 renewal period on here is 5,763,000 based on the  
7 megawatt method being the highest method. So divide  
8 by two for the surface owners and for the estate  
9 owners. Is it possible they would renew for that  
10 reason? I think it's highly unlikely, based on the  
11 portion of the proceeds that they're paying to the  
12 two owners versus what they get to keep for  
13 themselves, but it is possible. They could make  
14 that decision at that time.

15 Q I believe, sir, that the court reporter  
16 may not have heard one of the things that you said.

17 (Reporter clarification.)

18 Q (By Mr. Ray) I think you were referring  
19 to the megawatt method, weren't you, sir? When you  
20 mentioned a method, I believe you said the megawatt  
21 method; is that correct?

22 A I did say that as part of my answer, yes.

23 Q I believe that is what she did not catch.  
24 Thank you.

25 A I apologize. I'll try to go a little

1 slower.

2 Q All right, sir. We talked earlier about  
3 the disagreements that you had with Mr. Pfahl. Did  
4 you have any disagreements with Ms. Centera's report  
5 when you read her report?

6 A Again, you have to pull it up so I can  
7 remember what exactly the subject matter is. I just  
8 found it to be, you know, I have a lot of experience  
9 in this industry, and I believe blank. So it's  
10 like, well, okay, you know, that's fine. I mean, if  
11 a judge thinks that's helpful to him or her or a  
12 jury, that's fine, but I didn't really find any  
13 value in it.

14 (Exhibit 34 marked for identification.)

15 Q (By Mr. Ray) Okay. Let's pull up Exhibit  
16 34 so that you can take a look at that, sir, and  
17 we'll see if there's anything else that comes to  
18 your mind. Do you recall reviewing this document?  
19 I think you said you reviewed it in the last couple  
20 of days; yes?

21 A I've reviewed it a couple of different  
22 times, but, yes, most recently the last couple of  
23 days. I mean, I think, technically, it was probably  
24 like a week ago when I looked at this document, but  
25 within the last reasonable time frame.



1 Q And is there anything you recall  
2 disagreeing with about this report, based upon your  
3 review in the last week?

4 A I don't think that would be different than  
5 the first time I read it, but can you go to the next  
6 page? I mean, in some ways you've covered some of  
7 the semantic issues already today, so again, your  
8 questions are what they are, and she's arguing a  
9 different thing. So again, to the extent the judge  
10 or the jury decides this is appropriate, that's  
11 fine. I mean, again, she can have her opinion. I  
12 don't have any problem with that. Can you go to the  
13 next page?

14 Q Was there anything you disagreed with on  
15 either of the first two pages, sir?

16 A Well, obviously, I disagree with it,  
17 because we did something different than what she  
18 did, but, again, she's entitled to her own opinion.  
19 I just don't -- I just find it, you know, lacking in  
20 basis and just, hey, I do a lot of this work, so I  
21 know everything, and so here's what I think. So,  
22 again, to the extent that's helpful for somebody,  
23 that's fine.

24 Q And you, yourself, sir, have not ever done  
25 any work in negotiating agreements in the wind

1 energy industry, true?

2 A You know, I've negotiated a lot of  
3 agreements. Do I remember doing one in a --  
4 specific to a wind energy project, no, I can't think  
5 of one off the top of my head. Again, that's not  
6 what I did in this case either. So she makes -- on  
7 this next second page she makes statements like,  
8 "The minerals are being extracted and modified over  
9 a period of 25 to 45 years." No, that's not what we  
10 did. So the length is not illogical; it's actually  
11 what the specific lease that the surface owners  
12 have. So again, she has a different thought  
13 process, I guess, which is fine, but again, she's  
14 not paraphrasing my report properly.

15 Q But you don't disagree that the minerals  
16 are not being extracted by Osage Wind over 25 to 45  
17 years, right?

18 A Doesn't matter to me. It's not what the  
19 damages are in this case.

20 Q Right, but you don't disagree with that  
21 statement, do you?

22 A Again, it doesn't matter one way or the  
23 other whether they are being extracted or not. It  
24 doesn't matter.

25 Q The question is not whether it matters,

1 sir. The question is whether you disagree with that  
2 statement.

3 A I haven't formed an opinion on that one  
4 way or another, because again, it doesn't matter to  
5 me. I mean, she talks about all these methods being  
6 flawed, but again, these are specific methods that  
7 Osage Wind used with the surface owner. So okay, so  
8 I don't understand what your opinion is, but if  
9 somebody -- again, a judge or a jury decides that  
10 that's not the appropriate way of doing it, I  
11 respect that, but again, that's what they actually  
12 did in this exact same wind farm with other owners.  
13 So again, I agree with the semantics side of the  
14 equation. I don't disagree with it.

15 Q And that was --

16 A These are the exact methods that were  
17 used.

18 Q Right. And those were other owners with  
19 other rights, true?

20 A I don't see how that matters. Again,  
21 we're talking about the negotiation of the mineral  
22 estate owners to what they should receive based on,  
23 you know, Osage Wind's failure to get the lease that  
24 they needed.

25 Q The question, sir, is not whether it

1 matters or not. The question is whether the surface  
2 owners have different rights than the mineral  
3 owners?

4 A We've already covered that subject many  
5 times. I agree with you they're different. Could  
6 we go to the next page? So this particular area --  
7 I mean, fails to address, we didn't fail to address.  
8 In fact, we talked about a lot of the different use  
9 agreements in our reports. I don't know what she  
10 means by failed to address. We didn't consider  
11 those as comparable as the actual leases that were  
12 done on this particular property. So again, she can  
13 argue that those aren't the appropriate measure, and  
14 she can argue something different. That's fine. I  
15 respect that. But it's not that we didn't look at  
16 it, we're not aware of it. We're definitely aware  
17 of all those things so --

18 Q Why are those not an appropriate --

19 A -- again, if she has a different thought  
20 process, that's fine.

21 Q What methodology did you use, sir, to  
22 conclude that those were not an appropriate  
23 comparable?

24 A Everything we've been talking about today.  
25 I've already explained to you that the surface owner

1 leases are for this particular property, this  
2 specific location, this particular project. There's  
3 so many more things that are similar than these  
4 other -- like this person with the solar project, is  
5 solar renewable energy? Okay, fine. Is it the same  
6 thing as a wind farm, absolutely not, especially for  
7 the surface owners. So again, there's all sorts of  
8 dynamics where you're looking at the best  
9 comparables, which was what we did versus other  
10 potential comparables that we're aware of that are  
11 not as comparable as the one we used.

12 Q Wouldn't a solar project, sir, actually  
13 probably block more of the mineral estate than a  
14 wind energy project would?

15 A Yes.

16 MR. ASHWORTH: Object to the form.

17 A In general, that's true. But again,  
18 you're assuming that the mineral owners would allow  
19 the solar project to be put there at all. Can you  
20 go to the next page -- I'm sorry, can you go back to  
21 the first -- to that last page just for a quick  
22 second? I don't -- I don't think I'm the proper  
23 person to speak to her two opinions at the bottom.  
24 I mean, she seems to be pushing it back on the  
25 Nation, that they are supposed to advise them or

1 tell them or something like that. It's the  
2 contractor that basically has that responsibility,  
3 not the -- or the developer, I guess, is the word  
4 she uses. So I don't know who she's pushing this  
5 off onto. Again, they're the ones that have to look  
6 into all the different aspects of the project to  
7 know what the requirements are. And they were on  
8 notice that the Osage Nation didn't want this farm  
9 here, so they should have investigated that further,  
10 so these two particular areas to me are irrelevant.

11 Q (By Mr. Ray) But you don't have expertise  
12 in these areas, correct?

13 A I think I have enough expertise on lease  
14 negotiation broadly, but even specific to wind  
15 developers, I don't think there's any specific  
16 dynamic there that changes that particular aspect.  
17 Do I -- I mean, do I anticipate that a wind  
18 developer should look into all the leases that are  
19 necessary, absolutely. Does that include a mining  
20 lease? Absolutely, if it's necessary.

21 Q And do you know if it's ever been found  
22 necessary other than in this case?

23 A I haven't looked into that. I don't know.  
24 So you can go to the next page. I think these are  
25 just more details about those two opinions she was

1 asked to look into. So, I mean, again, she says  
2 what she says, and it is what it is. I don't agree  
3 it's an inaccurate valuation. I don't agree it's an  
4 inaccurate calculation of damages basis situation.  
5 I don't agree that it's a disproportionate windfall.  
6 How can it be a windfall? It's exactly the same  
7 thing as the surface owners got. How could it be  
8 possibly a windfall? That makes no sense  
9 whatsoever. So all of those dynamics, I just  
10 disagree, because I stand by my report.

11 Q But you can't name for us, sir, any other  
12 instance in which any other mineral owner has  
13 received a penny for a mineral -- for a wind farm,  
14 can you?

15 A But again, in this case, they have to get  
16 a lease, so that's irrelevant. They have to get a  
17 lease. So they have to negotiate the lease with the  
18 Osage Nation to basically get this wind farm in  
19 place. My understanding, the Osage Nation would  
20 have said no. Absolutely no is what they would have  
21 said. So now you're in a dynamic where you have to  
22 negotiate a lease with somebody that doesn't even  
23 want to do what you want them to do. So again, it's  
24 a very reasonable proxy to the damages in this  
25 particular case.

1 Q So why couldn't it be more?

2 A I've already said it probably is more, but  
3 I'm trying to get to the best, conservative proxy of  
4 the damages for this particular case.

5 Q But you're not aware of any other mineral  
6 owner being paid in this way, correct?

7 A Again, it doesn't matter. This particular  
8 case is somewhat unique. They don't want a wind  
9 farm there. I don't know how I can get that through  
10 to you. They do not want a wind farm there. So now  
11 you're negotiating with a party that doesn't want to  
12 do what you're doing. How do you think that  
13 negotiation is going to go?

14 Q The question, sir, is not about relevance.  
15 The question is whether you are aware of any other  
16 mineral owner that has been paid in this way?

17 A Again --

18 MR. ASHWORTH: Object to the form.

19 A -- I have not looked into that fully. It  
20 doesn't matter to me. I'm looking at the facts and  
21 circumstances of this case.

22 Q (By Mr. Ray) Are you aware of anyone  
23 other than you in a published article, a court case,  
24 anywhere else that advocates for paying a mineral  
25 owner for a wind energy project in the way you do?



1           A     Again, I don't think I published anywhere,  
2     so I don't know what you're asking there. So do I  
3     have a specific case with exactly these same facts  
4     and circumstances, no. Are there similar cases that  
5     speak to this, yes. So again, the judge or jury is  
6     going to have to decide that.

7           Q     What similar case speaks to this, in your  
8     opinion?

9           A     I didn't say there's a similar case. I  
10    said there's other cases that speak to this. I'm  
11    not a lawyer. I haven't investigated all the cases.

12          Q     Are you aware of even one?

13          A     There was a couple of cases that were  
14    talked about, trying to remember the names. I think  
15    one was Millsap that was part of the -- because I  
16    don't know if it's specific to this dynamic we're  
17    talking about. I think there's one called like  
18    DeVilla is another case. There was various  
19    different cases that the counsel had referenced and  
20    kind of told me how the cases came out to basically  
21    inform that opinion where it's a reasonable  
22    calculation of the damages.

23          Q     Did Millsap versus Andrews involve a wind  
24    energy project?

25          A     Again, I don't remember the specific of

1 the case, so I can't answer that.

2 Q Did the DeVilla case involve a wind energy  
3 project?

4 A Again, I'm not sure how that's relevant,  
5 but I don't remember one way or the other.

6 Q It was a case you said informed your  
7 conclusion in that regard; yes?

8 A I didn't say that.

9 Q All right. Did you rely on Millsap versus  
10 Andrews in any manner?

11 A I'm just answering your questions. I  
12 don't think I would say I relied upon them, because,  
13 again, I'm not a lawyer. You asked if there's other  
14 similar cases that might have formed your opinion  
15 about damage calculations. I gave you the best  
16 answer I could. I don't remember the specific of  
17 those cases.

18 Q Can you tell us anything about the  
19 specifics of those cases?

20 A You could pull them up, and we could read  
21 them together. I've read them before.

22 Q No. My question is your recollection as  
23 we sit here right now?

24 A I've tried to give you my best remembrance  
25 of what I read.

1 Q Can you tell us anything at all about the  
2 DeVilla case?

3 A Again, you keep asking me the same  
4 question over and over and over again. I've already  
5 tried to answer that. I don't remember any  
6 specifics about the case. I was trying to answer  
7 your other question. I tried to give you examples.

8 Q Did you say, sir, awhile ago that you have  
9 not been published anywhere?

10 A In this --

11 MR. ASHWORTH: Object to the form.

12 A -- particular case, I haven't been  
13 published anywhere, because, of course, I haven't  
14 testified in this matter.

15 Q (By Mr. Ray) And can you identify any  
16 source, other than you, that would say the mineral  
17 owners and the surface owners should be paid in the  
18 same way if mining occurs contrary to these  
19 regulations?

20 A Again, any damage treatise or textbook or  
21 whatever would talk about the comparable analysis we  
22 did. So all of those treatises and textbooks would  
23 be similar to this dynamic.

24 Q And they would say you would need some  
25 kind of a comparable, correct?

1           A       Which we have here. We have a comparable  
2       for the same property, for the same time period, for  
3       the same project. All those different things are  
4       the same.

5           Q       It's just a payment that's not based upon  
6       mining production in any way?

7           A       Okay. I understand your position there,  
8       but again, that's not what I calculated.

9           Q       And what are you calculating?

10          A       If you don't have that figured out by now,  
11       we're going to be here a while. I've calculated the  
12       damages to the mineral estate, based on the surface  
13       owners as a proxy for the damages to the mineral  
14       estate owner. I've already said it's kind of a  
15       conservative. I've already said it probably should  
16       be more, but I've tried to make a reasonable and  
17       credible calculation based on the facts and  
18       circumstances of this case.

19          Q       And by what methodology, sir, do you  
20       conclude that that is an appropriate proxy in this  
21       type of circumstance?

22          A       Based on all my years of training, based  
23       on every single textbook and treatise I've looked  
24       at, based on everything I've done in my whole  
25       career.

1 Q But you can't point out a single one of  
2 those that says that mineral owners and surface  
3 owners are paid the same in wind energy development;  
4 true?

5 A I don't believe any textbook would be that  
6 specific to the industry. Plus the other dynamic;  
7 it's not done that way. We're damage experts.  
8 We're not -- there's not going to be a book that  
9 says blank like that. It's not going to happen.

10 Q Is the only reason, sir, that you contend  
11 that the surface leases are a better proxy than  
12 actual mineral production in this county because you  
13 believe the Osage Nation was opposed to the project?

14 A Is that the only reason?

15 Q Yes.

16 A Is that what you asked?

17 Q Yes, sir, that's what I'm asking.

18 A I don't think it's the only reason. I  
19 think it's a big reason, but again, they went about  
20 doing their construction regardless of what the  
21 Osage Nation wanted or didn't want and, basically,  
22 created it, so now they have to compensate them for  
23 their damages.

24 Q Are there any other reasons that you  
25 believe the surface payments are an appropriate

1 proxy here?

2 A Besides all the things we've talked about  
3 today in this deposition today, as well as in my  
4 report? Is that what you're asking?

5 Q Yes, anything else that you haven't  
6 identified in your report or already today?

7 A I mean, there's probably something else,  
8 but I can't think of anything. I think you've  
9 covered the big areas.

10 Q Let's take a look at Mr. Hazel's report  
11 again. If we could go to page 64. All right. This  
12 is your listing of cases in the last four years at  
13 the time this report was given, true?

14 A True.

15 Q All right. Can you just look through  
16 these to yourself and tell me if there are any of  
17 them in which you gave a valuation of minerals?

18 A Go to the next page, if you wouldn't mind.  
19 I guess it depends on how you define it and what you  
20 think is the same as a valuation of minerals, but  
21 both the second and third line item there are what I  
22 call sister cases, but they are two different  
23 parties. Those relate to an aggregate mine, for  
24 lack of a better term. So we had to value the  
25 underlying material as well as the operation itself.

1 Q What --

2 A Can you go to the next page?

3 Q And what kind of a mine -- I'm sorry, sir.

4 I just want to be clear. You're talking about  
5 Hardesty and Schneider; is that correct?

6 A Go back to the last page. I apologize,  
7 the second page. So, yes, you used both names, the  
8 second and third line items, Hardesty and then  
9 Schneider, that's correct.

10 Q All right. And what kind of mines were at  
11 issue in that case?

12 A I mean, most people call it an aggregate  
13 mine. Some people might call it a sand and gravel  
14 pit. I mean, you could call it different things.  
15 There's a quarry there.

16 Q And how -- did you go about valuing the  
17 aggregate that was in place or something else?

18 A Both. We did an aggregate in place from  
19 the standpoint of the operations of the mine.

20 Q How did you go about valuing that  
21 aggregate?

22 A The same way we do any of them. We would  
23 look at the value of the underlying mineral for the  
24 revenue source, look at the overall costs we've been  
25 talking about and look at the value of the operation

1 overall.

2 Q Were you valuing the entire operation  
3 there; is that what you were valuing?

4 A Ultimately, yes.

5 Q All right. We can go to the next page  
6 now.

7 A Okay. I mean, so now we're getting to the  
8 coal matter at the very bottom there, the Licking  
9 River matter.

10 (Reporter clarification.)

11 A Licking River, just like it sounds.

12 Q All right.

13 A It's called the East Coast Mine, just to  
14 make it easier words.

15 Q And that was a bankruptcy; is that  
16 correct?

17 A True.

18 Q Who retained you in that case? Was it the  
19 debtor or the trustee or a creditor or whom?

20 A I don't remember. We were actually  
21 retained by the counsel with Jackson Kelly. Let me  
22 think about that a second. I think that we were on  
23 the trustee, but I would have to double-check the  
24 actual kind of, quote, client side of the situation.

25 Q Okay. So what was your role in that



1 matter? What were you looking at?

2 A So I guess, broadly, we were looking at  
3 the solvency and valuation of the operations, which  
4 includes the coal itself, and then there was other  
5 kind of fraudulent transfer preferential payment  
6 types of issues as part of that bankruptcy matter.

7 Q Okay. So did you actually do a valuation  
8 of actual coal there?

9 A Yes. The pricing of the coal, which is  
10 what you're kind of talk -- calling it during your  
11 questions today, was the pretty big dynamic of that.

12 Q How did you go about determining that?

13 A Well, this is a bankruptcy over a long  
14 period of time, of course, so at different times  
15 we're looking at the forward curves and the  
16 commodity pricing for coal during various different  
17 time frames.

18 Q You were just looking at the pricing of  
19 coal in the market that was applicable to this  
20 particular mine; is that true?

21 A You have to be a little bit careful there.  
22 There was different types of coal, so it would be  
23 different locations would be the appropriate spot  
24 for the sale of that particular part of the coal.

25 Q But for whatever particular part of coal

1 you were looking at, you would look at what it could  
2 be sold for in the nearest location, true?

3 A To determine what the revenue would be  
4 from that particular operation, of course.

5 Q All right. Are you ready to go to the  
6 next page, sir?

7 A I'm ready. I'm just trying to answer your  
8 questions.

9 Q Yes, sir. Well, if you're ready, if  
10 there's no other ones on that page that involve it,  
11 involve the valuation of minerals, I'm ready.

12 A Okay. So you scrolled through that pretty  
13 quick. Can you go back to the last page to make  
14 sure we didn't miss one? Okay. So go to the next  
15 page. Thank you very much. It's interesting the  
16 other -- let me think about that a second. I was  
17 expecting to see two other coal cases on here. I  
18 guess one settled relatively quickly, so we weren't  
19 deposed. The other one, they must have used the  
20 same deposition. Okay. Sorry. I'm just -- I'm  
21 kind of thinking to myself. I apologize.

22 Let's see. You can go to the next page.  
23 Go to the next page. Next page. I don't see any  
24 other ones here that would relate to that dynamic.

25 Q Sir, has a judge ever precluded your

1 testimony in any matter that you're aware of?

2 MR. ASHWORTH: Object to the form.

3 A I think there is one case that after the  
4 fact it was precluded, which is different than  
5 excluded, I guess. I'm trying to remember the name  
6 of that case. It was like Dentsply, I think, was  
7 the defendant. After I testified, she -- it was a  
8 she, the judge was a she -- determined that there  
9 was nothing wrong with my background or the actual  
10 calculations, but the remaining claims didn't  
11 coincide with our damage calculations.

12 (Exhibit 32 marked for identification.)

13 Q (By Mr. Ray) Okay. Let's pull up Exhibit  
14 32 if we could. I want to make sure we're talking  
15 about the same thing here, sir.

16 A That's fine.

17 Q Is this the case style to which you're  
18 referring?

19 A Yeah, there's actually two cases. One was  
20 called Windstat and one was called Center City. I'm  
21 trying to find the jurisdiction here.

22 Q It's in the Eastern District of  
23 Pennsylvania, I believe.

24 A Thank you. I'm sorry, I'm not a lawyer.  
25 I'm not used to looking at these things like you

1 are. I see that now. Pennsylvania, so yes, this is  
2 the case I was referring to.

3 Q It looks to me -- I'm looking at the fifth  
4 page of this document. It looks like the judge was  
5 named C. Darnell Jones. Is that -- I just want to  
6 make sure we're referring to the same situation.  
7 That's what it seems to indicate here. You were in  
8 the case, I wasn't.

9 A That's fair. I mean, I don't know what  
10 the C. Darnell Jones is. I guess we could look it  
11 up, but, I mean, again, the judge that was on the  
12 bench was a she. She was the one that was presiding  
13 over the matter. So I assume that's the same judge  
14 that's doing the opinion here.

15 Q Okay. If we look on page 10, if we could,  
16 this is the section about -- the judge here says  
17 your report is precluded; do you see that?

18 A I do.

19 Q And if we look on the next page, on page  
20 11, we do see, I think, a paragraph there where I  
21 believe, as you said, the judge found that you had  
22 what he calls here "an undifferentiated methodology  
23 that was now irrelevant for purposes of determining  
24 the damages that are solely the result of the  
25 wrong." Is that the line of reasoning that you were

1 thinking of?

2 MR. ASHWORTH: Object to the form.

3 A It wasn't expressed to me exactly that  
4 way, but I think that would be consistent with my  
5 understanding of the claims that were remaining.

6 Q (By Mr. Ray) And, sir, have you ever in  
7 your career testified adversely to the United  
8 States?

9 A I mean, I don't look at it that way, of  
10 course, based on our previous discussion, but I  
11 mean, there's been cases I've been on kind of the  
12 taxpayer side, for example, or cases related to  
13 different cases that we've had with the Department  
14 of Justice or the Department of Interior or the  
15 Department of Labor on, quote, the other side, but I  
16 don't look at it being adverse to them.

17 Q Okay. How many such occasions do you  
18 remember being retained by the party that was  
19 adverse to the United States?

20 A I would have to look back at the cases to  
21 see if that's the dynamic, but -- I can't think of  
22 one right off the top of my head, but I'm sure  
23 there's one that had a caption where it was against  
24 "the DOJ."

25 Q You just can't recall that as you sit here

1 now?

2 A Correct. I can't think of one with that  
3 specific dynamic.

4 Q Would you have a document in your  
5 possession that would show that?

6 A Oh, part of the problem is "in my  
7 possession" is the difficult word, because I  
8 transitioned from RGL to FTI in October of 2015, so  
9 I generally don't have anything available before  
10 that time. I have some of that, because there were  
11 some cases that were ongoing. I guess the only way  
12 I could look at that is to look at every single case  
13 I have in my possession to see if that's the dynamic  
14 is probably the only way I could do that.

15 Q You just don't recall one as you sit here  
16 right now today, correct?

17 A Yeah, I guess, I -- in full disclosure, I  
18 remember one where that's the dynamic, but I didn't  
19 necessarily get deposed or testify in those cases,  
20 so I'm trying to think of ones where I've actually  
21 testified or were deposed in those cases, and I  
22 can't think of one.

23 Q Tell me the one you recall, what you  
24 recall about it.

25 A Well, again, I can't give you specifics,

1 of course, for privacy reasons, but there are cases  
2 where I've been involved with the taxpayer against  
3 the IRS or against the Department of Justice. There  
4 are cases in the ESOP realm that would have that  
5 same dynamic. It's more of a valuation project, but  
6 there would be cases like that, would basically be,  
7 you know, with the DOJ involved in some capacity. I  
8 shouldn't say it that way. I should say the  
9 government involved, because it, you know, might be  
10 the Department of Labor, it might be the Department  
11 of Interior. I'm trying to kind of lump those into  
12 one jurisdiction.

13 Q Have you been involved, sir, in a case  
14 prior to this one regarding the issue of whether a  
15 lease should have been obtained from a Native  
16 American Indian tribe?

17 A I can -- you know, there may be more, but  
18 I'm trying to think of the ones related to Indian  
19 tribes. I can think of one that's about -- trying  
20 to think what time period that would be. I would  
21 guess maybe about six years ago was when that would  
22 have been finalized, where that dynamic occurred.

23 Q Okay. Tell us what -- which side were you  
24 on in that case? Who retained you?

25 A You've got to be careful --

1 Q Let's just -- who retained you?

2 A -- because of the privacy of the things,  
3 but which -- again, I don't really look at which  
4 side, but the attorneys were working for the party  
5 trying to negotiate the lease, if that helps you.

6 Q What was the subject matter of the lease?  
7 What was -- what were they trying to lease the right  
8 to do?

9 A To operate a profitable operation on  
10 Indian tribe land.

11 Q Did it have anything to do with minerals?

12 A I mean, I don't consider that the primary  
13 aspect of that case, but, of course, minerals were  
14 involved.

15 Q Was the lease generally for a surface use?  
16 Can you say that?

17 A Both dynamics would come into play in this  
18 particular example, so both the subsurface as well  
19 as the surface.

20 Q Did the issue of a mineral lease come up  
21 in that matter in any way?

22 A I don't remember it being separate and  
23 apart from the overall dynamic.

24 Q Do you ever remember it even being  
25 mentioned at all by anyone?



1 A Sure. I mean, it's pretty common to  
2 mention the surface and to mention the mineral,  
3 because you're looking at -- you know, as any good  
4 contractor, you're going to look at all the dynamics  
5 of the particular site and make sure that you're  
6 covering all bases so you don't come into a problem.

7 Q But do you recall the minerals coming up  
8 specifically during the course of that negotiation?

9 A My remembrance is the minerals were a part  
10 of that particular lease document. Again, I don't  
11 think it was primary in my mind, but you'd have to  
12 ask the attorneys that are actually drafting that of  
13 how important that particular aspect was of others.

14 Q What was your role in this process?

15 A I was a damage expert.

16 Q Was it a matter in litigation?

17 A Yes.

18 Q In what court?

19 A I can't tell you that, because it starts  
20 getting to be -- gets to be obvious which project  
21 we're talking about. It was in the southwest. I'll  
22 tell you that.

23 Q Was the entire case sealed?

24 A I don't know.

25 Q Was your involvement publicly disclosed to

1 your knowledge?

2 A I don't know.

3 Q Any other matters involved where you were  
4 involved in negotiating a mineral lease with a  
5 Native American tribe, other than that one?

6 A I mean, again, the minerals come up when  
7 you're talking about the tribes or any type of  
8 commercial project, for that matter, but I mean, I  
9 try -- I kind of remember that one from six years  
10 ago. Any other ones would be after that -- or prior  
11 to that time frame.

12 Q Do you have any specific recollection of  
13 any others?

14 A Not a specific matter, no, but again, you  
15 know, mineral rights and surface rights are very  
16 important for those types of dynamics.

17 Q I take it for those matters you just  
18 mentioned, you wouldn't have any documents in your  
19 possession regarding those, because they predated  
20 your time at FTI; is that correct?

21 A I would have to check on that. My  
22 remembrance is the case I'm specifically talking  
23 about, like I said, it was about six years ago, so  
24 it's right on that cusp of that time frame. It's  
25 possible I would have some documents related to

1 that, because I think the case was still finishing  
2 up right after I left RGL and when I started with  
3 FTI.

4 Q Can you tell us the name of the tribe that  
5 was involved, sir, or do you believe you cannot do  
6 so?

7 A No, that would get to be pretty obvious  
8 which case I'm talking about.

9 Q And you believe -- is there a protective  
10 order or something that prohibits you from  
11 disclosing that?

12 A Probably, but again, I'm a CPA. I can't  
13 disclose third party information without their  
14 express written consent.

15 Q Are there any other matters you can  
16 recall, sir, where you offered any specific opinion  
17 on the value of a mineral lease?

18 A I mean, again, a lot of the oil and gas  
19 matters would have a value of a mineral lease, if  
20 you're including oil and gas. In fact, we just did  
21 one recently in a Texas operation, so I guess the  
22 answer to that broadly is yes.

23 Q And did you, in any of those instances,  
24 look to payments to the surface owners to determine  
25 the value of that lease?

1           A       I mean, in those cases they were mature  
2 oil and gas fields, so we were obviously aware of  
3 any differences between the mineral and the surface  
4 owners, if there were a difference, but then since  
5 they're mature, we're looking at the income streams  
6 that are actually being generated by the subsurface  
7 particles.

8           MR. RAY: All right. Let's take a short  
9 break, if we could. I think we may be reaching near  
10 the end.

11           THE VIDEOGRAPHER: We're off the record at  
12 4:16 p.m.

13           (A recess was had.)

14           THE VIDEOGRAPHER: Back on the record at  
15 4:29 p.m.

16           Q       (By Mr. Ray) The case, sir, involving a  
17 Native American tribe in the southwest, did you  
18 actually give testimony in that case?

19           A       I mean, it was testimony in an arbitration  
20 that was unopposed but, yes, I guess I technically  
21 provided testimony.

22           Q       So do you think you would have disclosed  
23 that matter on expert reports that had -- if it was  
24 within four years, or would you have been prohibited  
25 from doing that?

1 MR. ASHWORTH: Object to the form.

2 A I mean, if I told you it was on my CV,  
3 then yes, it would show up on all those reports in  
4 that time frame.

5 Q (By Mr. Ray) Well, sir, we would like to  
6 at least obtain the case number of that, so would  
7 you look and see if you have a document that was  
8 disclosed to others that reflects the case number of  
9 that matter?

10 A I'm not volunteering to do that, but if  
11 I'm directed, then I can try to do that, but again,  
12 I may not be able to give it to you just because of  
13 privacy reasons.

14 Q Okay. Well, that would be our request.  
15 We'll be willing to follow up with your counsel  
16 about that, if that's okay -- or counsel for the  
17 U.S.; how about that?

18 A That's fine. Again, I have my own ethics  
19 and my own standards I have to abide by, so we'll  
20 see what we have to do.

21 MR. RAY: Very well. I'll pass the  
22 witness.

23 MR. ASHWORTH: Sorry, do you want to go  
24 first, Mary Kathryn?

25 MS. NAGLE: Sorry, so the intervener

1 plaintiff does not have any follow-up questions at  
2 this time. So we're good. Thank you.

3 CROSS EXAMINATION

4 BY MR. ASHWORTH:

5 Q Mr. Hazel, I just have two questions real  
6 quick. Earlier you, I believe -- I could be  
7 mistaken, but I think you said something like you  
8 were employed by the Osage Nation. I don't know if  
9 I misheard that, but I just wanted to clarify, that  
10 you are employed by FTI. FTI is your employer,  
11 Osage Nation is not; is that right? FTI is your  
12 employer?

13 A Yeah.

14 Q The U.S. retained you?

15 A Sorry. If I misspoke somewhere around  
16 there, no, I'm employed by FTI.

17 Q Okay. You've been retained by the U.S. as  
18 an expert, but to be an independent expert, correct?

19 A Correct.

20 Q Okay. The next thing is, earlier in your  
21 deposition you talked about factors that you had  
22 taken into consideration to value minerals, and you  
23 talked about several. You said market price you  
24 would take into consideration as a factor,  
25 transportation costs, production costs and other

1 factors. And I just wanted to see if to evaluate  
2 minerals another factor that you would take into  
3 consideration would be if there was any local laws  
4 or regulations that would apply to the minerals that  
5 could affect the price, if that would be a factor --

6 MR. RAY: Object to the form.

7 Q (By Mr. Ashworth) -- you'd take into  
8 consideration, right?

9 MR. RAY: Object to the form.

10 Q (By Mr. Ashworth) If it's applicable.

11 A It has to be sellable is the word that  
12 you're using or that you're referring, so I would  
13 agree with that.

14 MR. ASHWORTH: Okay. I have no further  
15 questions for you. I will say one thing is if we  
16 still have Ms. Centera and Mr. Pfahl still on the  
17 line, that we would ask they not destroy any notes  
18 they have taken today during the deposition, because  
19 we plan on issuing a subpoena for that.

20 MR. RAY: I just have one follow-up  
21 question based on --

22 MR. ASHWORTH: That's it.

23 MR. RAY: I just have one follow-up  
24 question if I could.

25 REDIRECT EXAMINATION

1 BY MR. RAY:

2 Q Mr. Hazel, who actually has the contract  
3 of engagement with the United States? Is it FTI, or  
4 is it you?

5 A I guess I have to be careful answering  
6 that question. I think I'm the signatory on the  
7 document, but it's on behalf of FTI. Does that  
8 answer your question?

9 Q Right. So you're signing on behalf of  
10 FTI, and the United States has retained the --  
11 whatever the full entity name of FTI is, correct?

12 A Yeah. I mean, again, are they retaining  
13 me as the expert versus my firm, I mean, I don't  
14 know the dynamics there, but again, it's an FTI  
15 letterhead with my signature in the engagement  
16 letter with the U.S. Attorney's Office.

17 Q And have you ever been engaged by anyone  
18 else in this case, including the Osage Minerals  
19 Council?

20 A Not that I'm aware of, no.

21 Q You don't have any contract of engagement,  
22 for example, with the Osage Minerals Council; is  
23 that true?

24 A Are you talking about me personally, or  
25 are you talking about FTI? I don't know for FTI,



1 but I don't personally, no.

2 Q Have you signed a contract relating to  
3 your own services on behalf of FTI with the Osage  
4 Minerals Council?

5 A I don't believe so, no.

6 MR. RAY: All right. I don't have  
7 anything further for today. Thank you, sir, for  
8 your time.

9 THE WITNESS: Okay. Are we done?

10 MR. ASHWORTH: We are done.

11 MR. RAY: The court reporter, sir, is  
12 asking whether you wish to exercise your right to  
13 read and sign the deposition transcript?

14 THE WITNESS: I would prefer to do it that  
15 way, but counsel can make the final decision on  
16 that.

17 MR. ASHWORTH: We'll have them send it to  
18 you.

19 THE WITNESS: Is there a standard 30 days,  
20 or is there something else in this particular case?

21 MR. ASHWORTH: Thirty days.

22 THE WITNESS: Okay. That's fine.

23 THE VIDEOGRAPHER: We're off the record at  
24 4:35 p.m.

25 (DEPOSITION CONCLUDED AT 4:35 P.M.)

JURAT

UNITED STATES/OSAGE MINERALS COUNCIL VS OSAGE WIND

JOB FILE NO. 150476

STATE OF OKLAHOMA

SS

COUNTY OF TULSA

I, STEVEN HAZEL, do hereby state under oath that I have read the above and foregoing deposition in its entirety and that the same is a full, true and correct transcription of my testimony so given at said time and place, except for the corrections noted.

\_\_\_\_\_  
Signature of Witness

Subscribed and sworn to before me, the undersigned Notary Public in and for the State of Oklahoma by said witness, STEVEN HAZEL, on this \_\_\_\_\_day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES: \_\_\_\_\_

ERRATA SHEET

UNITED STATES/OSAGE MINERALS COUNCIL VS OSAGE WIND

DEPOSITION OF STEVEN HAZEL

REPORTED BY: MARY K. BECKHAM, CSR RPR

DATE DEPOSITION TAKEN: APRIL 29, 2021

JOB FILE NO. 150476

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CERTIFICATE

STATE OF OKLAHOMA

SS

COUNTY OF TULSA

I, Mary K. Beckham, Certified Shorthand Reporter within and for the State of Oklahoma, do hereby certify that the above-named STEVEN HAZEL was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in the case aforesaid; that the above and foregoing videotaped deposition was by me taken in shorthand and thereafter transcribed; that the same was taken, pursuant to stipulations hereinbefore set out; and that I am not an attorney for nor relative of any of said parties or otherwise interested in the event of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 10th day of May, 2021.

Mary K. Beckham, CSR, RPR

CSR No. 01053